JOINT APPENDIX

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SUPREME COURT OF THE UNITED STATES
October Term 1973

No. 73-434

WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,

Petitioners,

-v-

RONALD BRADLEY, et al.,

Respondents.

No. 73-435

ALLEN PARK PUBLIC SCHOOLS, et al.,

Petitioners,

-v-

RONALD BRADLEY, et al.,

Respondents.

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM,

Petitioner,

-v-

RONALD BRADLEY, et al.,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 6, 1973
CERTIORARI GRANTED NOVEMBER 19, 1973

VOLUME II
Transcript – Segregation Hearings

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TRANSCRIPT OF PROCEEDINGS AND TESTIMONY

WITNESS – ROY L. STEPHENS, JR.

(1)

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Proceedings had in the above-entitled cause before Honorable Stephen J. Roth, United States District Judge, at Detroit, Michigan, commencing Tuesday, April 6, 1971.

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[13] ROY L. STEPHENS, JR.,
was called as a witness by Plaintiffs and being first duly sworn testified as follows:

THE COURT: Your full name, sir.

THE WITNESS: Roy L. Stephens, Jr., S-t-e-p-h-e-n-s.

DIRECT EXAMINATION BY MR. LUCAS:

Q. Mr. Stephens, will you tell us where you live?

A. 5340 Kellen Lane, Bloomfield Hills, Michigan.

Q. What is your occupation?

A. I am Chairman of the Board of Jensen-Miller Company.

THE COURT: Just a point of physical facility here. Wouldn't it be better if you put your lectern over to that side?

[14] MR. LUCAS: Yes, I think it would be.

THE COURT: Then counsel could see the witness.

Q. Mr. Stephens, have you held a position with the Detroit Board of Education?

A. Yes, I was a member from July, 1959 through June 30, 1966, a six-year term.

Q. Did you have any connection with the Board or any particularized interest with the Board of Education prior to your

elections?

A. Yes. For two years prior to my election I was the representative of the Detroit Council of Parent-Teacher Associations to the Board of Education. In that capacity it was my duty to attend the School Board meetings, to transmit thoughts or statements that the Detroit Council of Parent-Teacher Associations might want to make and also to listen to the proceedings and to report back to the Detroit Council of Parent-Teacher Associations on the proceedings of the Board.

Prior to that I was for two years legislative chairman of that same body and in that capacity I was interested in legislation as it pertained to schools and in particular as it pertained to the school district of the City of Detroit.

[15] Q. Did you hold any position on committees appointed by the Detroit Board of Education for studies of the school system?

A. Yes, I served as Chairman of the Finance Commitee and member of the Citizens Advisory Committee on School Needs.

Q. When was the report of that committee rendered?

A. That was completed in 1959.

Q. Do you know the inception of that study?

A. 1957.

Q. As Chairman of the Committee on Finance was this with regard to the finance of the Committee itself or as to financing the public schools of the City of Detroit?

A. It had nothing to do with the financing of the Committee itself. It was known as the Romney Committee and had contributions from the Ford Foundation and other organizations. It had to do with the financing of Detroit schools.

Q. In 1957 did you also hold another position with a citizens group in connection with public schools in Detroit? Particularly I refer with regard to Proposition D?

A. Yes. I had forgotten that for a moment. There was a citizens committee organized to imform the citizens of Detroit about

the needs of the schools and it was known as the Citizens Committee for Proposition D. It was a two and one-half mill increase in millage which was being asked for and it failed.

[16] Q. Do you have children in the public schools of the City of Detroit at the present time?

A. No, not at the present time.

Q. Did you have children in the public schools?

A. Yes, I had three.

Q. When were your children in school, sir?

A. My children were in school in the City of Detroit all during the time I was a member of the Board and my oldest son attended Cass High School. My daughter attended Ford High School and elementary schools prior to that. My youngest son attended Dow Junior High and all my children attended McKenny School for their elementary school education.

Q. Did you live anywhere near the Cass School?

A. No. I lived in the McKenny School area. I lived on Braile, which was in the far northwest about halfway between Seven and Eight Mile Road and fairly close to Lahser.

Q. Did your son get to Cass by means of bus transportation?

A. Yes. My son attended Cass on the public transportation system.

Q. What subcommittees or full committees did you work with prior to your election as an officer of the Board?

A. I was Finance Committee Chairman.

Q. Of the Board itself?

A. Of the Board itself.

Q. All right.

[17] A. I served as vice-president for one year and president for one year.

Q. What year were you president of the Board?

A. 1964.

Q. You then were a member of the Board during the period of time in which the Equal Education Opportunities Study was conducted?

A. Yes, I was.

Q. Mr. Stephens, were you also on the Board at the time the findings and recommendations of the Citizens Advisory Committee were approved or adopted by the Board?

A. Yes, I was.

Q. Was the Citizens Advisory Committee appointed by the Board or at the instigation of the Board?

A. Yes, it was.

Q. Was this a recommendation of the original Romney Committee that a separate study be done with this facet of the school system?

A. I'm not certain but I believe that it was recommended.

Q. Who provided the funds for the study?

A. The major portion of the funds for this study were provided by the Board of Education.

Q. What was the source of information which the Equal Educational Opportunities Committee used?

[18] A. Primarily they had their own staff people.

Q. Assigned to them by whom?

A. Assigned to them by the Board of Education.

Q. These would be Board employees, is that correct?

A. Yes.

Q. All right.

A. They went into the schools and looked at the buildings, looked at the physical plant, looked at the programs, talked to the people in the schools, teachers, citizens, students, parents, formed their own opinion from their own research.

Q. Did they conduct hearings where parents in community groups would appear?

A. Yes, they did.

Q. Were they divided into various subcommittees?

A. Yes, they were.

Q. Were any studies conducted at their request of the Detroit School system? For example, were any studies made of the racial composition of various schools?

A. Yes. They requested information regarding the race of students and teachers and we do not have any notation of race on any records and so, therefore, it was necessary to make a racial count and I believe we did this probably two or three times from perhaps 1961 to 1963.

[19] Racial counts were taken simply by having the administrator in the school count the number of whites and Negroes on his staff and the individual teachers made the same kind of count in the classroom of the students.

Q. This was a matter that came before the Board of Education for its approval or disapproval?

A. Yes, it was.

Q. And the Board, I take it, voted to conduct this study?

A. Yes, we felt that they needed the data or they wouldn't have asked for it so we approved it.

Q. I direct your attention to Plaintiff's Exhibit 3 which is already in evidence, page 61. This is the report, findings and recommendations of the Citizens Advisory Committee on Equal Educational Opportunities.

***

[22] . . .

Q. (By Mr. Lucas) Directing your attention to page 61 with reference to boundaries, will you tell me whether or not from [23] your experience both as a person interested through various organizations and commissions in the public education of the City of Detroit and familiarity with its data and as a Board member, whether or not you agree with that conclusion and would you state that conclusion if you do, sir.

***

[24] . . .

A. Yes, at that time I agreed with it.

Q. (By Mr. Lucas) What does the statement refer to, sir?

A. Essentially it recommends that the pupil transfer policy of the Detroit Public Schools should be liberalized to permit any child at any grade level regardless of race, religion, nationality or social level to transfer to any school in the system under the following conditions: Then it lists two major conditions.

[25] Q. What is the predicate initial statement in paragraph C, that is the particular basis for the recommendation?

MR. BUSHNELL: I ask that it all be read into the record if Mr. Stephens is going to testify from it.

Q. (By Mr. Lucas) Please, if you will read from the beginning of that paragraph.

A. This is a paragraph C, "Boundaries and Bussing: Numerous public schools in Detroit are presently segregated by race. The allegation that purposeful administrative devices have at time been used to perpetuate segregation in some schools is clearly substantiated. It is necessary that the Board and its administration intensify their recent efforts to desegregate the public schools. This report will now turn to the side of the segregation problem that seems unquestionably within the province of the Board of Education. It is possible for the Board by various arrangements within its power to modify segregated conditions within the school system. Already the Board is on record with certain policies which constitute moves in this direction, for example the policy of 1959 on transporting pupils. 'That the school be the nearest one having enough space provided it is not or probably will not be needed to serve pupils of its attendance [26] area or of an attendance area as close or closer than the proposed sending school.'

"Administration of this policy can bring about desegregation and has done so in recent instances. Below the subject committee submits recommendations intended to help the Board to move farther in the direction of taking all reasonable steps toward desegre-

gation within the framework of its major responsibility, which is to provide the best possible education for all children. All such proposals should be evaluated in the light of their general educational soundness."

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[27] MR. BUSHNELL: I'll object again, no foundation unless it's established that Mr. Stephens himself participated in the location of a given school and until the question is directed to an identified school or schools. This calls for speculation.

THE COURT: Well, it calls for a conclusion. Isn't there better evidence of that? Wouldn't the school zones and the location of schools be the supporting evidence on a question like that rather than his conclusion?

MR. LUCAS: Your Honor, I am interested in laying a foundation of a different sort as to what the pattern of locations were in terms of his own experience on the Board, from his own knowledge, whether or not schools were located. It is a policy question more than anything else, policy and practice question.

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[30]...

Q. (By Mr. Lucas) Were there optional attendance zones for every set of schools?

A. No.

Q. Were they only in certain areas?

A. Certain areas.

***

[31]...

A. Well, I will say that central administration determined which areas were optional areas.

***

A. Well, I'd say this: that my observations would lead me to believe that in many instances, I'm not saying this was universal, in many instances students who were white would select the predom-

inantly school and students who were black would probably go to a school that was predominantly black.

Q. (By Mr. Lucas) Were the zones, the optional attendance zones between black schools and white schools?

A. Frequently. And I would say that was probably our major reason [32] for wanting to eliminate that practice.

Q. Was it then adopted another policy called open schools?

A. Yes.

Q. Would you tell us what the open schools policy was?

A. In the open schools policy we estimated whether the total number of the schools we had in Detroit were, if taken as a total, overpopulated to the extent of about 115 percent of the capacity. If a student was in a school that was over 115 percent of capacity, it was considered to be more crowded than the average. He could then transfer to a school that had seats available, and these schools were designated by administration and by the Board as open schools.

In most instances, he was required to provide his own transportation, but if he was in a school with more than 15 percent overcrowding, in other words more than 115 percent of capacity, he could ask for a transfer, and if he could find a school, one of the open schools that had vacancies, he could ask for transfer to that school and be transferred.

Many students were, I would say probably more than 2,000.

Q. Were the open schools during the time you were on the Board mainly white schools or black schools?

***

[35]...

A. Well, my belief is that most of the schools that had been declared open schools were schools that were more than 90 percent white in their student population.

Q. (By Mr. Lucas) What was the result of the open school policy in terms of integration or desegregation of the system?

A. Initially it resulted in integration to the extent that schools such as Osborn or Henry Ford High School, which were

[36] more than 90 percent white, would receive as many as 200, maybe 200 black students. And in that respect they were integrated to the extent of some 5 to 7 percent of their population.

Q. You said that was the initial results?

A. Yes.

Q. It was the subsequent result of the open schools policy?

A. There probably would have been subsequent results, but I can't testify to those because I haven't had up-to-date ratio count information. I don't know.

Q. Do you know whether or not white students in schools which were heavily or predominantly black would be eligible for transfers to these schools, such as Ford, Osborn, which you've listed?

A. They were at that time.

Q. Do you know whether or not they utilitized that option?

A. Yes. Some did to the extent that I've indicated.

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[131] RICHARD V. MARKS

was thereupon called to the stand for and on behalf of the Plaintiffs, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FLANNERY:

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[134] Q. With respect to housing only, Mr. Marks, would you tell us how the Commission functions and with respect to discrimination in housing what generally have been the duties of the commission and what have been your duties during your period at the Commission.

MR. BUSHNELL: We object to any further testimony on housing as irrelevant and immaterial under the rule of Diehl 1 and 2.

THE COURT: Objection overruled.

MR. FLANNERY: May it please the Court, [135] Plaintiffs will be happy to stipulate Mr. Bushnell's objection is a continuing

one and Mr. Sachs and Mr. Krasicky's if that would serve to move proceedings a little faster and more smoothly.

THE COURT: Yes, it may be understood you are presenting a continuing objection on this phase of the case.

MR. BUSHNELL: Thank you.

THE COURT: That is the acts or actions by public officials other than defendants with respect to housing patterns and housing facilities. Is that what you are pursuing?

MR. FLANNERY: It is.

MR. BUSHNELL: And by private parties as well, public officials, private parties other than school people.

THE COURT: Yes.

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[145] Q. (By Mr. Flannery) Mr. Marks, could you put into words for us, if you will, or describe for us the evolution of the racial residency patterns in the City of Detroit as they are reflected in the exhibit and if you would care to do so from closer to the exhibit that would be fine with me, whichever is more convenient for you.

(The witness approached the exhibits.)

A. The form of presentation of these individual maps is that of percentage of non-white. In 1940, the first count that there was ever, whenever there was an official census related to specific areas of residency, it clearly showed major areas of concentration as being black, non-white population as a central city population group but with some major areas of dispersion such as West Warren-McGraw; Warren City Limits, Eight Mile- Wyoming, areas on the east and on the west of Highland Park and some population on the east side.

There was some scattering, if this was a map showing individuals and not percentages related to totals, we would see some scattering or some scatteration, blacks would be represented in some of the individual census tracts, not presently appearing in color. That was the classic Detroit pattern. Historically blacks have lived within this what we call the older city bounded by Livernois, bounded on the west, [146] bounded by Conner on the east and bounded in general by Six Mile on the north.

As you can see there are exceptions to that pattern. This is obviously the Eight Mile-Wyoming section and there are blacks living in that area outside of that pattern and this area here adjacent to what now is known as Sojourner Truth also is outside of that pattern. The Algonguin section similarly so.

By 1950 this represented 9 per cent of Detroit's population at that time.

Q. At what time is that?

A. 1940.

Q. Thank you.

A. In 1950 the basic containment pattern, non-whites in the city, began to emerge very clearly. By 1950 this, as you know at this point at which the restrictive convenants have now been declared unenforcible, the basic population pattern that you can see of blacks appears much clearer in the 1950 census data because there has been extensive fill-ins. Concentrations are still there. They have expanded but there was, as you can see the pattern between what we call the East Davison section from 1940 to 1950, some changes there. The West Davison section similarly shows changes of a generalized movement northward and westward. But by 1950 still no major breakout from what we are calling the Livernois-Eight Mile-Conner-older city dispersion.

[147-a] By 1960, that line has varied from the Livernois line, Conner line and East Six Mile line with the exceptions noted that have been previously noted.

In 1960, as you know, that period '50, to go back to approximately 1950, the '50s was the census period that followed World War II. During World War II, Detroit, of course, was, the issue in Detroit, of course, was where would housing be place? In the war years and in the post-war years there was a desperate need for housing to be built in the city, primarily for war workers and men after the war for the returnees and/or veterans. It was of great concern about where this housing was to be placed because vacant land had been held. I mean there was extensive vacant land, so much so that in the period following as in the period 1945 to 1955, approximately 200,000 homes were built in Detroit west of Livernois, north of Six Mile and east of Conner.

There was almost 200,000 homes in a ten-year periodbuilt in what we call middle city section.

Only in three areas could blacks buy new houses. Those are areas of established occupancy, Eight Mile-Wyoming, and the Sojourner Truth area, or what is called [147] the Dog's leg section of Detroit, far southwest. So that out of the 200,000 new homes built in that ten-year period, blacks occupied perhaps one per cent of those or were able to purchase one per cent of them. And the restrictions of the market and/or the economy were evident in that these lines could be seen as screens or barriers to the movement of black people into the housing market generally.

By 1970, however, beginning in '60, some beginnings in 1960, evidenced that a breakthrough past the Livernois line was beginning, and that the movement north of Six Mile was showing further. It was showing further opening of areas that previously had been prescribed. The far east side, on the other hand, was just as solid as ever.

By 1970, the breakthroughs really were occurring, so much so that it gave people in our city great hope that we were ending restrictions in the housing market, that people were being viewed as people, able to compete and buy housing. But the theory on which our office was operated was that rather than restrictions being ended, the market, as the real estate market, people who marketed housing had simply acknowledged that there was great expansion of black population going on. It was a great movement of whites to the suburbs, a great loss of white population by the central city, and that blacks had to acquire properties. These additional [148] blacks in our city, both from natural growth and from population movement, that is movement to the city, had to be housed somewhere . So that all we saw happening was simply the relaxation of a previous line-restricting barrier and at least the beginnings of a new line forming roughly at Greenfield-Southfield movements. There had been some movements beyond this that do not show, some individual families in percentages too small to be represented on this map, but there is some dispersion there.

There is almost no dispersion in the areas east of Conner, except that which is represented in the two tracts, census tracts 788 and 781 on the east side.

Q. Thank you, Mr. Marks.

(There witness returned to the stand)

Q. Did I understand you to say, sir, that as early as 1940 there was some black occupancy in the Sojourner Truth and Eight Mile-Wyoming area?

A. Yes. The depression years, like any population group, some people hated the central city, some people hated the congestion or disliked it, wanted to escape it and they sought housing elsewhere. While you and I might question if we had pictures of some of that housing we might question whether they were moving to freedom or whether they had just moved shacks and [149] tarpaper shacks and that to a new area, because there was some very depressing housing there. But it still represented people searching for something better and away from the congestion even at that time of the central city.

Q. Were there in those two areas that I mentioned, were there public housing projects?

A. During the war years the City of Detroit placed temporary public housing facilities and permanent facilities in the Sojourner Truth area. As I am sure most everyone in this room knows, there was a 1941 riot in the Sojourner Truth area. It was a period of extensive community controversy over the placement of that public housing. Then the question of who would occupy the public housing was a matter of extended public debate and at the point at which the debate was resolved and the first occupants moved to take possession, first black families were to move in, there was a riot on that day that delayed it to block their taking possession of the property and delayed their ultimate occupancy of the project.

Q. Mr. Marks, in reviewing Exhibit 16, you have described for us in words the concentration or the evolution of the concentration as it has occurred. Do you have an opinion, sir, as to the factors underlying the pattern as it has evolved, and, if so, what is that opinion?

[150] A. There are many factors that determine, that operate in the housing market. There are many factors that determine what a person views as suitable housing for himself and his family, what he might view as an appropriate location for himself.

Housing is very much tied in with ones sense of status, ones sense of his own being. People consume housing for more reans that just shelter. But if we were to try to explain that pattern, the pattern that has emerged on that map strictly in the terms of the combination of the obvious racial patterning there, we would have to explain how there could be, as we knew there was in the black community, people who were employed year-round at fulltime jobs as fulltime teachers as doctors, some laywers, some business men. There was plenty of range of economic level in the black community, a range that made these individuals eligible to purchase housing anywhere in the City of Detroit.

Obviously they were not anywhere, were not allowed to purchase anywhere.

And, similarly if we ask the question the other way: What is the nature of the housing outside of where Negores live? Was that suburban housing too expensive a character that Negroes could not possibly compete for it? We have to answer that in the negative also, that the housing that was represented outside of those broad limits of Livernois [151] and Six Mile and Conner that I have given contained properties that might range anywhere from what might be called rural slum–as a matter of fact, a stone's throw from one of our most important high schools in the far west side has housing that can only be viewed as rural slum and ranges all the way up to some of the most expensive and valued property in our city.

So the explanation of why Negroes live where they live fails us if we apply strictly an economic test.

There are many screens which sift out people which have historically prevented blacks from living where their choice would suggest. But the history of the Commission on Community Relations is the history of an agency that year in the year out from our creation, engaged in what we call firefighting.

[152] So that as black folks sought housing in that market and as the numbers of black people in our city increased, each year the number of housing cases that we would have to deal with where there was evidence of rock-throwing or mob action or efforts to enforce covenants or conspiracies to prevent people from moving in, these kinds of things literally fill file cabinets in our office and at some points we have charted the nature of housing

incidents in the private market that evidenced clearly the opposition of some white people to the movement of black families. That is just one factor.

It doesn't deal at all with the questions of who markets housing, how does housing get marketed and how do people get valued.

We might note, as infamous as the system was, and it had a name, called the Grosse Pointe System, where people were valued by their, given ratings so that a black man had no rating at all, an Italian might have, I can't recall the specific rating system but I remember a friend of mine wondering where a butcher might fit or where a Pole who was a butcher might fit in that rating system.

I think, as a matter of fact, one of my commissioners when this issue was at its peak was quite convinced that he could not have moved into the Grosse Pointe area. As much as a community was labeled here and the plan [153] was operative in the Grosse Pointe area, clearly status was also a factor in the movement of people in other portions of the community. The term "undesirable" that was clearly the rating given to black people whether they were of wealth, in a family of standing, or whether they were new arrivals to the city, they were all grouped as "undesirable" as the zero rating would indicate.

In other sections of our city that same rating of people by status indicated you had tremendous neighborhood activity, not just in terms of improvement associations that followed in the wake of all of the restrictive convenants, the restrictive convenants if we had a map that showed or described the pattern of areas excluded from Negro occupancy by, at one point, an instrument that had legal standing, we would be covering literally three-quarters of that map.

These public barriers have been eroded over the years and so they no longer have standing in the eyes of the courts, no longer have standings, at least public standing in private business practices. But the reality of these traditions still continues to this day even though this doesn't exist.

Now, in our agency in our city and state and in our nation, statutes which prohibit discrimination or at least permit a discrimated – an individual who might feel he [154] has been discriminated against, permit him to appeal to a court of law or an

administrative tribunal of some sort for relief. Nevertheless the pattern does persist.

Q. Mr. Marks, what governmental policies, if any, played what role in the process you have described?

A. Well, government was–

MR. BUSHNELL: Excuse me, Mr. Marks. Might I ask that the level of government be established either in the question or in the answer, local, state, federal.

Q. At all levels, Mr. Marks, but if it is not clear from your context I will ask you to identify which level you are talking about at a particular moment.

A. The building of these cities that really do occur following the war was with the help of the Federal Government, the depression years first had produced government aid to cities in the form of subsidies for urban renewal, for slum clearance in the building of housing projects but the major expansion of cities was done with the help of the government, FHA and other kind of guarantees.

As part of our unhappy governmental history there is clear evidence that the Federal Government at some points proscribed and described ways in which undesirables were to be kept out of neighborhoods, ways in which any influence that might lower property values might be [155] excluded from a neighborhood, advisories that later became parts of the code of ethics of the real estate profession. Real estate – as part of their profession, one of the items of their code was to help keep out of any neighborhood any undesirable influences. They ranged everywhere from I suppose packing houses right on through to the reality of helping keep black folks out of neighborhoods.

That is perhaps a negative influence of government. There are other things which were part of our Detroit history, also an unfortunate history, but a reality nevertheless.

Public housing in Detroit was segregated from its very beginning. It was built, beginning in 1934, as public housing for whites or for blacks, so that the agency I worked for when I joined the agency in 1947, the agency already had policy that said that the problems we were experiencing in our community grew out of

conditions which were themselves inherently unequal. And that segreation as such was one of those patterns and practices of our city that had to change so that any man, white or black, could be acknowledged before the law as an equal.

Public housing stayed segregated until a Federal Court, this court as a matter of fact, that is this district, Judge Lederle ruled, first he spoke out clearly in [156] the community in 1950, I believe in 1952; then he ruled shortly after the Supreme Court ruling on the basic question of segregation in schools but Detroit maintained public housing segregation officially to the point of his ruling.

It maintained token integration some three or four years beyond that and at which time it was officially ended and out tenant selection practices developed to conform completely with the right of any person to seek public housing anywhere in the city that it was available.

Q. Do you know, sir, whether there are still projects that are all black or virtually all black?

A. There are projects which are virtually all black, yes.

***

[157] CROSS EXAMINATION BY MR. RITCHIE:

Q. Mr. Marks, throughout your answers to the direct examination you used the word "containment." Now, in your own words, exactly what do you mean by the policy of containment of blacks within the residential areas of the City of Detroit?

A. Well, when a piece of property is not freely available to any person who has the desire to purchase, the money to purchase, the desire to purchase as I say and a willing seller, we would view that as any example of individual restriction, that's a refusal to consummate a deal on a piece of property that is available on the market with a person who is desirous of purchasing.

When that pattern, when evidence of a pattern, not just of individual refusals, but a pattern that exists throughout a total area, we call that containment. It is just as effective a barrier as if a wall were built in the community.

***

[175] THE COURT: I have one other question along that same line, however. We mentioned, and that is what I wanted to call attention to and solicit your view on it, as I see it some of the pattern of housing in the more distant past, not 1940 but well before that time, so far as the City of Detroit is concerned was an outgrowth of the pockets of immigrants that came here and settled and they did it for their own protection because they didn't know the language for one thing nor the customs nor the ways and wasn't it natural for them to collect in a group so they might better conduct their business and social intercourse?

A. True.

THE COURT: But passing from those ethnic groups are there pockets of, concentrated pockets of people who have in their communities concentrations of those who have, for example, followed a segregated pattern in other parts of this country and who have come here?

A. I'm afraid I don't know – give me an example.

THE COURT: Let's put it bluntly. Are there big pockets historically or present now of people who have [176] come up from the South?

A. No. The reality of all of the groups that you have mentioned, the ethnic groups, the Poles, Italians, Germans, all of the ethnic groups, have been, as you described, first to hit a city and to have a primary area of occupancy but as that population group matures over time, say ten years, and people get involved in the life of the community, get jobs, as they begin to get jobs and their families grow they have the need to move on. They want to have a bigger house or need a little more room or want a newer house, that is part of the American ethnic too.

All of the groups you described, including the Southern white, of course he has an initial point of entry and then there is a period in which he gets his roots down but as soon as those roots are down he is established as part of the community and he begins to move. He moves where his job and his emerging status takes him which has been to housing elsewhere and so it was really this period of the post-war where we were so clearly able to see the movement of everyone of the ethnic groups through the screen that it historically kept them in a central city. We watched persons of Italian, German, Jewish, Russian and other extractions,

watched those people move to secondary concentrations but through the screen to newer housing and watched the Negro [177] make the effort to cross the line only to be in fact held in as a contained population. The best examples I suppose are what you would describe as the policy or the political battles over the location of public housing because we still had extensive vacant land and it was anytime that public housing was proposed in an area, massive opposition emerged because public housing was viewed as we used to say in the war years, "The paratroop ground." It was public housing even though 60 per cent of Detroit's public housing was occupied by whites, in the mind of the general middle class American, I suppose it became identified with not just low income but black.

So public housing was almost synonymous with black occupancy and wherever public housing was proposed it was fought in this community first until they could define who was going to live in that property so that our public housing commission at one point established as policy that they would, in placing any housing, building of any housing anywhere in the city, they would not change the racial characteristics of a neighborhood. That was to guarantee to the white people that if they built public housing in their neighborhood it was going to be for whites only. It was only at this point, really, in which the court ruled on that question on the question of Detroit's public housing segregation that [178] that policy substantially ended. In fact, when they built housing they built it for whites or for blacks and they built it for blacks in the central city as a part of the response to those so-called political pressures.

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[184] ALLEN E. PRIESTLEY

was thereupon called to the stand for and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified as follows:

[185] DIRECT EXAMINATION BY MR. LUCAS:

Q. Mr. Priestley, what is your occupation?

A. I am a vice president and chief title officer of Burton Abstract & Title Company.

Q. How long have you been a title attorney with the Burton Abstract & Title Company?

A. 26 years.

Q. Mr. Priestly, have you executed an affidavit concerning the records of the Burton Abstract & Title Company with respect to racial covenants in housing and the practices of that company with respect to said covenants?

A. I have.

Q. I show you what is an original of an affidavit and ask you to examine it and identify it and your signature thereof.

A. Yes. This is the affidavit.

Q. Mr. Priestley, in order to expedite the matter, would you simply read your affidavit into the record, and after that I want you to answer these gentlemen's questions, if they have any.

A. All right. This is entitled Affidavit.

"I, Allen E. Priestley, am presently the vice president and chief title officer of Burton Abstract & Title Company. Having been a title attorney with said [186] company in Detroit for 26 years, I am familiar with the records of the company. From 1910 through February 15, 1950, almost all new subdivisions throughcut Metropolitan Detroit contained restrictions and covenants against ownership and occupancy by Negroes, except in some cases where Negro residence was restricted to domestic servants and the like. Subdivisions were platted and recorded in large numbers from 1920 to 1930 and 1945 to 1950. In the intervening years, due to war and depression, relatively fewer subdivisions were platted and reported. The attached map, Exhibit A, accurately reflects any understanding of the location and extent of race-restrictive covenants within the city limits of Detroit. A similar pattern existed in the suburbs to the considerable extent to which they have been subdivided by 1950. On February 15, 1950, FHA reversed the previous policy requiring homogeneous areas and refused to insure or finance properties restricted by explicit racial covenants entered into after that date. Thereafter, most new subdivisions did not contain explicit race restrictions. Restrictions on lot size and inspection and acceptance of purchase restrictions by builder and subdivision economies persist. To my knowledge, the FHA prohibition on racial covenants in no way was directed at

other practices of owners, builders, brokers, bankers and buyers. In practice, as well, the FHA policy was not in [187] force against lots previously subdivided and racially restricted by covenant but later developed and sold. The racial restrictions contained in deeds continued to be reported by Burton Abstract & Title Company in its abstracts and title insurance policies until December 16, 1969. On that date, as a result of a request of the Department of Justice, dated November 26, 1969, to the effect that the continued listing of racial restrictions would be a violation of Title 8 of the Civil Rights Act of 1968, a memorandum was sent to all agent and officers of Burton Abstract & Title Company agreeing to delete or omit such racial restrictions. The letter of the Department of Justice and the response of Burton Abstract & Title Company thereto are attached herewith as Exhibit B to this Affidavit. Approximately 9 percent of transactions handled by Burton Abstract & Title Company are handled on abstracts only, without title insurance or commitment. In those cases the racial restrictive covenants shown on the chain of title are either struck out or otherwise erased."

Signed: "Allen E. Priestley."

And it's notarized or sworn to.

Q. Mr. Priestley, just for clarification, that erasure in the asterisk also dates from the 1969 date, is that correct?

A. Yes, it does.

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CROSS-EXAMINATION (BY MR. BUSHNELL)

[196] Q. As a title person and as an attorney did you or did Burton believe that racial restrictions were of any force and effect subsequent to the Supreme Court decision in approximately 1946, as a matter of law?

A. We were not completely convinced in this matter because Sites versus Magee and the related cases at that time, I believe this was in '46, merely established that the restrictions could not be enforced as between parties. We were still not convinced that a civil damage action might be maintained between the parties and because of this we were not convinced that we should omit such restrictions from our title work until a later decision and this is referred to in our memorandum that is one of the exhibits here, this later decision. I don't recall the citation myself offhand.

Q. Would you refresh your recollection, sir, simply so we can note it on the record?

A. In the memo we have a statement in there that the remaining doubt as to the lawfulness of private adherence to such covenants seems to have been resolved conclusively by the Supreme Court in 1968, and we refer to the case of Jones versus Alfred H. Mayer Company, 392 U.S. 409.

MR. BUSHNELL: Thank you very much. That is all I would ask of you, Mr. Priestley.

[200] JAMES A. BUSH

was thereupon called to the stand on behalf of the plaintiffs, and having been first duly sworn, was examined and testified as follows:

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[250] . . .

A. It is the annual report of 1943, and it concerns –

MR. BUSHNELL: Page?

A. This is page 37 in the annual report.

And the portion that I have marked is as follows:

"The most critical problem to be met during the initial occupancy period at the Gardens" – this refers to the Herman Gardens Housing Project – "was the provision in school facilities. Although the Board of Education had long before initiated the necessary applications for funds and priorities to build a school on the premises, the construction of the school had been delayed. As a result, there were no school facilities as such available for the large new school population which was moving into the [251] Gardens. To meet this need, the Housing Commission and the Board of Education entered into an arrangement whereby basement hobby rooms, storage rooms, a wing of the administration building and later the entire community building was turned over to the Board of Education for schoolroom use."

Q. Is there a picture of the classroom?

A. Yes.

Q. On what page?

A. It is on page 38, and the picture is designated "Schoolchildren in Gymnasium of Community Building."

Q. And what was the racial designation of Herman Gardens?

A. It was white at that time.

Q. And what is the racial characteristic of the children in that classroom?

A. Well, it appears that all are white – but –

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[322] KARL TAEUBER

was thereupon called as a witness on behalf of the plaintiffs and, being first duly sworn, testified as follows:

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[349] . . .

A. Segregation indexes of the same type that I've been discussing have been calculated for a number of cities for a number of the ethnic groups of European origin. The census does identify individuals, whether they were born in another country or whether their parents were born in another country and then identifies in the census fifteen or twenty separate nationality groups. And we can compare the residential patterns of one nationality group with that of another group or with all native whites generally.

As I say, this has been done for a large number of such comparisons, and the segregation indexes, depending on the particular groups involved, tend to be ten, twenty or very rarely about thirty, compared to these indexes of 70, 80, 90 for the black versus white comparison. This means that the specific answer is that the black segregation [350] is much greater than the segregation of nationality groups from the rest of the population.

If I may, I'd comment that this represents some degree of change over the last half century, so that at an earlier point in our history, say 1910, there was not that great difference between the segregation of black groups and of nationality groups, but the nationality segregation measures diminished very rapidly. And since that time the measures of segregation of black from white have gone up very dramatically.

Q. Doctor, with respect to the degree of segregation between blacks and whites, how does Detroit compare to the other cities that you have studied.?

A. With respect to the specific index value, Detroit is not at all unusual. The specific value cited in the book on page 39 was 84.5 for 1960. This puts it in the middle range of cities. There are some cities that are more segregated and some that are less.

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[357] . . .

A. Yes. My approach to this is to consider that there are several types of causes, possible causes of residential segregation by race. One obvious one may be referred to as Negro poverty or economic status. We know that blacks in American cities are poorer that whites. We know that poor housing tends to be located somewhat differently from more expensive housing so that this might be one contributory factor to segregating the races.

Another factor might be that one group prefers to live with its own members. This is depending on which group you look at. Let's say the Negro preference or choice [358] interpretation, Negroes live in a segregated fashion because they prefer to. There has also been considerable literature and discussion of the possibility that there are mechanisms of discrimination by which whites or white institutions make it difficult for Negroes to exercise a choice and to obtain housing and live wherever they would like.

My own feeling is that all of these contribute to the patterns of segregation in United States cities but that the economic or poverty interpretation is usually much exaggerated in part because we have sterotypes of how our cities are organized and of what the black populations are like.

I believe the choice argument is easily exaggerated in part because of too easy an analogy of what is believed to have happened to some of our nationality groups in the past and I believe the major factor that persists is discrimination of one sort or another whereby whites deny access of blacks to housing in many parts of the city. If I may I could comment pretty–briefly on the basis for these conclusions about the minimal role of economic status and the choice.

The economic status, first I might note that let's take an economic measure that is directly relevant to the housing people get and this is how much rent do they [359] actually pay now. A black household that is paying a rent of say $76.00 –

MR. BUSHNELL: Again if the Court please, I am going to object unless the witness testified that he knows this of his own personal knowledge. If it's on the basis of literature it is clearly hearsay. He is now testifying to facts and not opinion.

THE COURT: The objection is overruled.

A. At the moment I am speaking about the hypothetical underpinnings for my argument, saying that a non- white family that is paying $76.00 a month in rent for a house that is currently in a predominantly black neighborhood presumably qualifies in an economic status for a $76.00 monthly rent housing unit anyplace in the city.

In 1960, the census shows us that within the City of Detroit the median rent paid by non-white families living in rented houses was $76.00 a month. The median is that figure which cuts the total distribution in half; half paid more and half paid less.

For whites in 1960 the median rent paid in the City of Detroit for rental housing was $64.00 a month, so that the non-white population on the average was paying a higher rent within the city than was the white population and yet the non-white population had a radically different distribution [360] and, indeed, a concentrated residential pattern and we do not find that rich blacks live in the same areas as white blacks, that the only difference – I got that wrong –

THE COURT: A contradiction in terms.

A. These days that term may be in use. The rich whites and rich blacks do not live intermixed throughout the city. The poor whites do not live in the same areas that the poor blacks do. There is something more than simply economic status that accounts for this.

I have looked at this in much more complex statistical patterns. For instance, I considered simply the value of owner--occupied housing and rental level of renter-housing in each tract. One can check each tract as to the value of housing, whether $10,000, $10,000 to $15,000 and so forth, how many housing

units rent for more than $150 a month and how many for less than $20.00. One can say this is the basic economic structure of housing. Some tracts have more high-priced owner-occupied housing, some tracts have more low price rental housing. This is the economic structure.

Now, we know for the city what share of all of those people living in the poorest housing, the lowest housing is blacks and we can hypothetically say: Suppose those blacks were randomly distributed among all of the low rent housing wherever it is in the city, how many blacks would we find in [361] each tracks in this low rent category. Similarly we can say that in the highest value category for owner-occupied housing there is still some non-whites who live in housing of that value, it may be only five per cent. I don't have the figures at hand but in any case one would then find that in this hypothetical model, whatever part of the city had some high-priced owner-occupied housing, if economic factors alone were the explanation for where blacks lived then there would be about five per cent blacks in that kind of house.

One can say how many blacks would one find in each area of the city if the only determinant of where they lived was how much rent they were paying or how expensive their home is. One can they say, there is a hypothetical distribution of blacks throughout the city and I can calculate the same kind of segregation index and find that it's about–I did it for 1940, 1950 and 1960, and got values of 20, 17 and 17.

So that I say in simply looking at the economic status in this relatively simply way, we find that the economic factors would produce about one-fourth or one-fifth of the segregation that we actually find when we go out and measure where blacks and whites live.

Now, using more complicated models which I won't go into unless necessary, I find that the role of economic factors is somewhat less than this would say. [362] This said it accounts for maybe one-fourth of the segregation and I think that is an exaggeration because the model is a very simple one.

A second explanation that I said in addition to the poverty one is the choice one and I think the kind of testimony you may get from blacks living in Detroit may be more relevant but I would

note two facts, first, on a national basis polls by the Louis Harris organization in 1963 and in 1966, after some of the Black Power rhetoric had become quite common, it showed 64 percent and 68 percent respective of the black population sample saying that they prefer integrated neighborhoods and only one-fifth or less saying they preferred to live in black neighborhoods.

I also find in my examination in Detroit and in these nine other cities that I studied more intensively, that the blacks who lead the invasion from predominantly black areas to white areas on the periphery as the ghetto expands, that these blacks tend to be the wealthier and more educated blacks and I interpret this as indicating that those who can afford to do so among the black population try and escape the worse housing and seek better housing. One of the things they seek is housing that is less segregated so that this is an expression in their behavior of their choice, [363] without just asking them what they believe, it is a matter of seeing how they actually behave.

I don't think the choice factor is very relevant.

I think there is considerable evidence in our society for the past as well as for the current situation of various types of discrimination in the housing market where people in all levels of the real estate industry, whether it is a person showing the home to a black who is looking, whether it is the person managing the financial arrangements for this or financing the developer, there is considerable discrimination against blacks trying to keep black residential areas, keep blacks in defined residential black areas. There is considerable evidence of this that I have examined and I believe that this is the major factor accounting for the kind of segregation that occurs, not just in the present but also in the past, because the structure of the city is well established now.

Any individual person coming to it sees the way it is structured, sees the social patterns that have been developed, and hence, tends to accommodate to that, so that we have not only current patterns of discrimination but also past patterns producing the situation that has persisted for at least the last 30 years and developed over the [364] period prior to that.

I think it is this that has produced and sustained the high degree of segregation that I find in the United States cities.

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[426] MARTIN SLOANE was called as a witness by Plaintiffs and being first duly sworn, testified as follows:

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[445] Q. (By Mr. Flannery) Mr. Sloane, do you have an opinion as to whether the policies of the FHA and its predecessor agencies and the Veterans Administration have contributed to racial residential separation of people in our urban areas?

A. Yes, I do.

MR. BUSHNELL: I would repeat or reinstitute my continuing objection.

THE COURT: Yes, it will be so understood.

MR. FLANNERY: Thank you.

Q. (By Mr. Flannery) Mr. Sloane, would you tell us what that opinion is, and would you also tell us the basis for that opinion? And so that I may avoid interrupting you, would you describe the policies to which you refer and the manner in which they operate?

A. In my opinion, the Federal Housing Administration and to a lesser extent the Veterans Administration have been formidable factors in developing the patterns of racial residential separation that exists in metropolitan areas today. The reason I say that to a lesser extent the Veterans Administration, is that the Veterans Administration is a newer agency, and it merely followed policies and practices which the FHA was responsible for initiating.

[446] The FHA was created as part of the National Housing Act of 1934. It was the first major direct involvement with the Federal Government in what previously had been largely a private enterprise operation – housing. This presented the Federal Government with an opportunity to intercede and impose its own policies subject to constitutional safeguards on what had been already clear evidence of discriminatory practices by various representatives of the private housing and home finance industry, real estate brokers, builders, mortage lenders. Instead, FHA in its early days was perhaps the most active exponent of racial discrimination and racial segregation in housing. Its early underwriting manuals, as early as 1935 to 1938, gave instructions to their underwriters as to the various factors that bear on how they would appraise houses.

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[448]...

Q. (By Mr. Flannery) Mr. Sloane, what is your opinion with respect to the effects of the policies of the FHA and the VA on residential segregation in urban areas?

[449] A. The policies of FHA, in my opinion, and to a lesser extent those of VA were formidable factors in the development of the racial residential patterns that we have today in metropolitan areas.

FHA, as I said earlier, was created in 1934 and its policies in its early years were to actively promote racial segregation, in fact, racial discrimination.

In the early underwriting manuals which were entered as exhibits, FHA gave advice to its underwriters as to the factors on their appraisals of particular houses for purposes of FHA mortgage insurance.

In Plaintiff's Exhibit 56 of the FHA underwriting manual with revisions to June 1, 1935, FHA in a section entitled "Protection from Adverse Influences" stated as follows in Section 310:

"Important among adverse influences besides those mentioned above are the following: Infiltration of inharmonious racial or nationality groups."

In its 1938 underwriting manual FHA had this to say to its underwriters concerning quality and accessability: –

Q. Excuse me. Would you identify the exhibit number and the page?

A. Exhibit 56-A, Section 951. This is the underwriting manual with revisions to February, 1938. They said in Section 951:[450] "If the children of people living –"

Just a moment.

"If the children of people living in such an area are compelled to attend schools with a majority or a considerable number of the pupils represents a far lower level of society or an incompatible racial element, the neighborhood under consideration will prove far less stable and desirable than if this condition did not exist."

FHA went beyond its advice to underwriters by recommended restrictive covenants be filed to assure against undesirable conditions being in existence.

In Plaintiff's Exhibit 56-A, the underwriting manual with revisions up to February, 1968 –

Q. What date?

A. February, 1968.

Q. 1968?

A. I'm sorry. '38, 1938. In Section 980, which is entitled "Protections from Adverse Influences," in one of these subsections they recommend recorded restrictive covenants, which would prevent this adverse influences. And one of the adverse influences that they recommend the covenant prevent, the provision would be prohibition of the occupancy of properties excep' by the race for which they intended.

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[452] A. FHA's policy of promoting housing segregation and housing discrimination lasted until 1947 quite clearly. Until that time they were still advising their underwriters against inharmonious racial groups.

In 1947, there was a slight change of form in FHA policy, was not one of substantive. They stopped referring to inharmonious racial groups and began referring to inharmonious user groups. This is well after World War Two. This did not actually reflect a change in FHA policy.

The first really substantive change in FHA policy came as a direct result of the United States Supreme Court decision in Shelly versus Kramer, which ruled that racially restrictive covenants were judicially unenforcible, and it was nearly two years after that decision that FHA changed its policy from one of encouraging racially restrictive covenants to one of refusing to insure mortgagors on properties which carried racially restrictive covenants filed of record after February 15, 1950. The Supreme Court decision was rendered in May of 1948. Thus, it was nearly two years after that decision that FHA policy changed.

[453] In the meantime, the Veterans Administration loan guarantee program had been initiated shortly after the end of

World War Two, and Veterans Administration tended to follow FHA policies and practices, although the Veterans Administration must be said had never did actively encourage racial discrimination. Its policy from the beginning was one of neutrality. It follows FHA's lead in 1950 by also declining to guarantee loans on property carrying racially restrictive covenants filed after February 15, 1950.

FHA and VA policy for roughly the next decade continued to be one of neutrality, that is they would willingly insure lending institutions, finance builders, regardless of whether these lending institutions or builders followed racial homogeneous policies or practiced housing dsicrimination.

In 1959, the Commission found that after some twenty-five years of FHA activity, less than 2 per cent houses provided through the FHA programs had been occupied by black families. The problem was more than one of whether FHA policy had from 1950 to '60 been one of neutrality or one of actively promoting discrimination.

FHA had done so much to sow the seeds of housing discrimination and to lay the foundation for racial separation in metropolitan areas to harden the patterns of [454] residential segregation that exist, to harden the practices of the real estate industry, that even today, some thirty-five years after FHA begun, we are still reaping the results of what FHA did in this first decade of existence, and that is a real problem. So that the posture of neutrality is certainly no longer capable of reversing the patterns of residential segregation which this federal agency was so largely responsible for creating in the first instance.

It was not until November, 1962 that FHA and VA became at least legally positive forces for residential desegregation. That was as a result of the issuance of the executive order on equal opportunity in housing issued by President Kennedy on November 20, 1962, which directed FHA and VA and other departments and agencies having functions relating to housing to take all actions necessary and appropriate to prevent discrimination in housing provided in their programs.

The Commission has done a good deal of work in determining how effective FHA and VA and other federal agencies have gone

about their assignment of preventing discrimination, and unfortunately, their performance has been characterized by a passive and unaggressive attitude. This is in sharp contrast to their rather forceful policies and practices with respect to promoting housing discrimination and housing segregation. When it came time for their policies to [455] change 180 degrees, they were not nearly as forceful or aggressive as they had been in their earlier days in promoting housing segregation.

In 1968, the Federal Fair Housing Law was enacted. It was Title Eight of the Civil Rights Act of 1968. And FHA as well as all other agencies having housing responsibilities were then under not only a President directive but a Congressional directive to prevent discrimination in nearly all housing in the country. And two months after the Federal Fair Housing Law was enacted, the United States Supreme Court in Jones versus Mayer & Company, relying on a 1966 Civil Rights Law, enacted pursuant to the Thirteenth Amendment, ruled that discrimination on the basis of race is prohibited with respect to all housing. private as well as public. So that as of today FHA is under a Presidential directive to end discrimination under a Congressional directive to end discrimination and under a congressional mandate to end discrimination.

And on the basis of our recent analysis of their activities, which is reported in our report of last October, the Federal Civil Rights Enforcement Effort, their activities still are characterized by posture of timidity, passivity, lack of aggressiveness. This, again, in sharp contrast to their zeal, to the zeal with which they promoted housing discrimination back in the first decade of their existence.

[456] Q. (By Mr. Flannery) Mr. Sloane, can you tell us whether back in 1950 FHA continued to insure property with restrictive covenants if the restriction had been filed before 1950?

A. Yes, they did. Their refusal to insure mortgages on property only applied with respect to covenants filed of record after February 15, 1950.

Q. Can you tell us, sir, whether FHA furnished to developers a proposed or model restrictive covenant?

A. They set forth provisions which contained what a model covenant should contain. I have no actually seen the model

covenant, which a number of people say that FHA did provide. But they did set forth the provisions of what such a covenant should contain.

Q. Can you state, sir, whether on the basis of information known to your commission, findings made by your commission, and investigations made by the Commission, disclose whether the proposed model covenant included racial restrictions?

A. Yes, it did.

Q. Mr. Sloane, do you have an opinion with respect to the relationship between residential racial segregation and the policies and activities of public housing, Public Housing Authority and its predecessor agencies?

A. Yes, I do.

Q. Could you in the manner that you have described for us, the [457] evaluation of FHA policies, describe the policies of the public housing sector?

A. Yes. In my opinion, the public housing program, which is a combined federal-state agency program, has been a very strong factor in the development of the racial residential patterns that have developed today. The policy of the federal public housing officials has been different in its history from that of FHA. Public housing program which began, was created in 1937 as part of the United States Housing Act, never did actively encourage racial discrimination or racial segregation. In fact, it had perhaps the most progressive attitude of any federal agencies concerned with housing at that time. It insisted on a racial equity formula to insure that minority families got their fair share of public housing. This is in contrast to FHA, which as I noted earlier, as of 1959 less than 2 per cent of its FHA housing had been occupied by black families.

The United States Housing Authority insisted on the racial equity formula. However, it left to the discretion of local housing authorities the decision as to whether public housing would be provided on a racially integrated or racially segregated basis. Almost invariably it is provided on a racially segregated basis. This was in the North as well as in the South.

[458] It was not until the issuance of the executive order on equal opportunity in housing in November, 1962, twenty-five years after the public housing program began that the official policy of the federal agency charged with the responsibility for ad-

ministering this program changed to one of prohibiting racial segregation in public housing.

As early as 1954 after the decision in Brown versus Board of Education on legally compelled school segregation, it was quite clear to public housing officials that for local housing authorities to segregate families by race was a violation of the Fourteenth Amendment. In fact, the Commission in 1961 wrote to the then Public Housing Administration which was the successor to the United States Housing Authority and asked how they could justify a policy of permitting local housing authorities to segregate families by race in view of not only the Brown versus Board of Education decision but subsequent decisions by United States Court of Appeals dealing specifically with legally comparable segregation of public housing and they conceded that the decisions all seemed to suggest that such segregation was a violation of the Constitution, but they were not prepared to do anything about it until they were commanded to by the President.

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[462] Q. (By Mr. Flannery) Mr. Sloane, would you describe for the Court [463] in summary fashion, if you will, precisely the policy techniques, and by that I refer to tenant assignment policies and site selection policies with respect to public housing that has produced the results which you have already stated in conclusionary form.

A. Until the issuance of the executive order on equal opportunity in housing, the typical tenant assignment policy which was permitted by the Federal Public Housing Administration was one of assigning tenants on the basis of their race. This was supplemented by a site selection policy permitted by the Federal Housing Administration whereby local housing authorities would select sites designated for Negro occupancy or white occupancy and then would assign tenants to those projects on the basis of their race and this was changed following the issuance of the executive order on equal opportunity in housing, a policy which has evolved to a point where now the Public Housing Administration, its successor, the Housing Systems Administration, insists on a balanced site selection policy of local housing authorities to assure there are sites outside areas of racial concentration as well as within and a tenant

assignment policy which no longer permits assignments on the basis of race but is a form of first come, first served tenant assignment policy.

[464] Q. Can you state, sir, whether these amendments to policies in your opinion have dispelled the prior effects of the prior policies?

A. No, they have not. For one thing the program has been in existence for well over thirty years. It has produced something over 800,000 units, low-income housing. The patterns of such housing in the various cities in which they are located are so clear that it would take a monumental effort to reverse these patterns, black families know the housing projects that they are supposed to be living in; white families know the housing project they are supposed to be living in because the patterns of rigid racial segregation were established over a thirty-year period and very difficult to reverse.

Some of the more recent policies of the Federal Public Housing officials have been aimed at eliminating some of the effects of the past but these policies in my opinion still are too tentative, not nearly forceful enough to make much headway in terms of reversing the rigid patterns that have developed.

Q. Mr. Sloane, could you describe for us again in summary fashion the effects, if any, on residental racial segregation resulting from the policies of regulatory agencies?

A. There are four agencies, if I understand your question correctly, that are involved. These are agencies which regulate, [465] supervise and benefit most of the nation's mortgage lending institutions. There is one, Federal Home Loan Bank Board which regulates and benefits savings and loans associations responsible for something of over 40 per cent of the nation's home financing and agencies which regulate and benefit the nation's commercial and mutual savings banks. These would be the office of the Controller of Currency with the responsibility of national banks; the Board of Governors of the Federal Reserve System with responsibility for state bank members of the Federal Reserve System and the Federal Deposit Insurance Corporation which insures deposits of all national banks, all Federal Reserve member banks and a large number of state banks which are not members of the Federal Re-

serve System.

Their policies over the years has been one of complete neutrality. Their concern has been limited to the safety and soundness of investments and as far as these agencies are concerned the lending institutions who may have responsibility have been free to practice racial discrimination, if they so chose.

This has been changed as a matter of law by the enactment of Title 8 of the Civil Rights Act of 1968, which prohibits discrimination in mortgage lending. These agencies have been slow to adopt procedures aimed at assuring lending institutions that they regulate are, in fact, not practicing [466] racial discrimination.

One of the problems has been that the policies of the agencies has tended to reflect the policies of the financial institutions that they regulate.

For example, in 1961, we asked a question of each of these four agencies whether they thought it would be appropriate for a lending institution, mortgage lending institution to consider the race of the would-be borrower or the racial composition of the neighborhood into which he wanted to move as an, a factor in determining whether to make a loan and each of them said yes.

One answer was suggested that not only was it permissible but it probably was the obligation of the lending institution –

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[467] . . .

Q. Earlier in your testimony, Mr. Sloane, you referred to a study that has been completed but as I understand has not yet been disseminated concerning the effects of programs, fairly recent programs, as I understood your testimony with respect to home ownership for lower income families. Can you state what that program is and with respect to racial segregation what are the investigative findings of the investigators of your commission?

A. This program was adopted as part of the 1968 Housing Urban Development Act. It's a program of federal subsidies to enable lower income families to become home owners.

The commission recently concluded an investigation of how this program is operated in four metropolitan areas and what we

found was that the very same patterns that [468] exist in the housing market in general, that is, white families by and large living in suburban areas, central cities – housing in central cities occupied by black families has been repeated almost precisely in this program.

The usual justification for the pattern in the general housing market which is that economics is a key factor and the black family can't afford housing in suburban areas and that is no application with respect to the program which, by statute is offered to families who are within the same income limits blacks as well as whites. Housing is subject to cost limitations which are the same for all families, black as well as white, yet we found new housing in metropolitan areas is being built in the suburbs being occupied almost entirely by white families and in a few instances black families are occupying new subdivisions housing in all black subdivisions, whereas existing housing under the program is by and large in the central city occupied almost entirely by black families.

In other words, the very same pattern in the general housing market is being repeated in the program with no economic justification at all.

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[491] . . .

Q. Can you tell us what percentage of the market of home is financed through FHA?

A. Currently my rough estimate would be 20 to 25 per cent of the new housing market annually.

Q. Has it been higher in the past?

A. Yes.

Q. Do you have a figure as to its highest amount in the past?

A. In the early 1950's the combination of FHA and VA was responsible for in excess of 40 per cent of the market.

Q. Would that be the highest amount of the market financed?

A. I'm not entirely sure, it may have been higher.

Q. Would that be your opinion that at one time they had 40 per cent of the market?

A. Yes. I did some checking to find out specifically.

Q. You have done such checking?

A. Yes. This, of course, the unfortunate thing was at the time when FHA and VA were the dominant forces in the housing industry. They were either actively promoting housing segregation or standing by allowing the housing industry to carry [492] that policy out. Following the issuance of the executive order changing the official policy of the FHA, that is when the combined share of FHA and VA dwindled. It is now up from 1963 and '64, but it had gone down to considerably less than 20 per cent of the housing market.

Q. When you use the 40 per cent, are you talking about FHA or VA or both?

A. I was talking about the combination of the two.

Q. The most percentage of the market they had was 40 per cent according to your opinion, is that right?

A. I didn't hear you.

Q. Considering both agencies the highest percentage of the market that those agencies had was 40 per cent, is that right?

A. No, I can't testify to that. We did look–

Q. You don't know, do you?

A. We looked at several years and they were between 35 and something in excess of 40 per cent during the early '50s. It may have been higher at some other time, I'm not sure.

Q. You also mentioned in your direct testimony these other federal agencies that have a great deal to do with financing of loans and you mentioned the Controller of the Currency and the Federal Reserve Board. Taking into consideration the FHa and VA and those four federal agencies you made reference to, can you give us an opinion as to what percentage of the market [493] for the sale of homes is this fact influenced by these federal agencies and their policies?

A. Yes. I made an estimate on my own in connection with an article I wrote back in 1963, and the combination of FHA and VA underwritten loans and conventional loans made by institutions supervised by these four agencies amounted to something in excess

of 80 per cent of the single family sales market.

Q. So four out of every five homes was affected by a federal policy which emanated from one of those agencies you have identified?

A. Well, the trouble was in most cases it was not affected by a federal policy because there was none.

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[496] . . .

Q. If the Federal Government was involved in 80 per cent of the housing and if the policies of the Federal Government as reflected in the agencies you described, active discrimination or passive and neutral behavior, what is your opinion as to what the responsibility of the Federal Government was toward the discrimination we have in housing?

A. I think the Federal Government bears a large responsibility. First, certainly, for being an active prompter of discrimination practices on the part of the industry with which it had to deal, that there is a great burden which it had to sustain, a great responsibility to reverse the patterns of racial residents which in a large part it was responsible for creating.

To go from a posture of actively encouraging discrimination to one of neutrality hardly sustains that burden. It can be sustained only by at least as monumental an effort and as aggressive an effort to reverse the pattern it helped to create which created the problems in the first instance.

[497] Q. Has such effort been made?

A. No, it has not.

Q. In your opinion, are the FHA and VA and the other four fiscal agencies which you have identified, in your opinion, are they today complying with the President's order of 1962?

A. In a literal sense I suppose you could say they are complying but there are a variety of activities which are within their discretion to undertake to comply much more vigorously than the manner in which they are complying right now and in my opinion they have not undertaken the full range or adopted the full range of practices and policies which would be sufficient to

amount to the kind of aggressive posture necessary to reverse the pattern which they are responsible for creating in the first instance.

In a literal sense I suppose the agencies could say, "We are complying with not only the Presidential Executive Order but also the Congressional mandate, Title 8, of the Civil Rights Act" but they have not undertaken the full activity or undertaken the posture of fair housing which would make a difference between the terms of what is happening in the metropolitan area.

MR. KRASICKY: Thank you.

[510] Cross examination by Mr. Ritchie

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THE COURT: Well, taking that in that light and applying what you know about a city, any city in the United States with the same problem and with the same color makeup, do you have an opinion as to what would happen to what are depicted there on the map, Exhibit 2, as now white areas? Would they, as Mr. Ritchie suggests, lead really to an abandonment in large numbers by white folks so that when you ended up with the city you'd have a city that was no more integrated than it was when you started. Do you have an opinion on that?

A. Perhaps I have something resembling an opinion or at least something I can relate in my own experience which may be relevant here. There is one school of thought that talks about a tipping point theory, both in terms of housing and in terms of education, as some magical percentage, say 35, 40 or 50 per cent blacks, suddenly the entire school system or the entire--school or the entire area will turn completely black. This is a matter of conjecture and it's very difficult to say yes or no to it. And I believe you said, your Honor, that Detroit school system is 46 per cent black.

MR. RITCHIE: No, that's the city population. [511] Mr. Sloane.

A. The same principle has been discussed in a conjecture with respect to residential population. Experience in Washington is perhaps instructive. Washington metropolitan area has not changed by more than one percentage point in terms of the per cent white

and per cent black in the last seventy years. It's always been roughly 75 per cent white, 25 per cent black. The distribution of the population by race in the Washington metropolitan area has changed very dramatically to the point where the Northern Virginia suburbs has something like 6 per cent black and 94 per cent white. The Maryland suburbs and suburb of Montgomery County has something like 4 per cent black and 96 per cent white, whereas 60, 70 years ago there was an even distribution.

But talking about integrating the schools of Washington, of course Washington Public Schools are now in excess of 90 per cent black, and it's very difficult to talk about acheiving school integration with that kind of percentage. But if you think in terms of the metropolitan area as a whole, the problem becomes a good deal less difficult because then we're dealing with a school population as well as a residential population which is roughly 75 per cent white and 25 per cent black.

I think in a situation like that you have to talk in terms of metropolitan wide desegregation, residentially as well as in education. [512] And it is, in fact, I think an exercise in futility to think in terms of integrating a school system which is already so predominantly black as to make racial integration an impossibility. It is, however, not an impossibility if you talk in terms of the metropolitan area as a whole.

Now, I feel rather uneasy about–

THE COURT: Well, I don't know whether fortunately or unfortunately this lawsuit is limited to the City of Detroit and the school system, so that we're only concerned with the city itself and we're not talking about the metropolitan area.

A. I feel uneasy making a prounouncement or a prediction about a city which I'm not really that familiar with.

THE COURT: Well, but I'm suggesting to you that the problem would be no different, I take it, whether you're talking about Detroit or some other city. If you take just the essential elements of what–

A. Yes.

THE COURT: –I stated as a hypothesis here, based on your experience and training, what is your opinion as to the effect of it and the outcome?

A. Well, I had reports of experiences in other cities, not to be [513] sure as large as Detroit, but cities which are, you know, something above small towns, cities like Berkely, California, for example, or Evanston, Illinois, where the reports are that desegregation has been accomplished completely and successfully as measured by such factors as school attendance, average school attendance, achievement scores. So you can only draw analogies. There has not been an experience that comes to my attention involving a city as large as Detroit.

THE COURT: I don't want to keep pressuring, but let me ask you this question: Suppose that you and I were to meet ten years from now, could you give me an opinion now that you think would be valid as to an effect in history ten years from now?

A. Depends on what was done rather than just the act of physical desegregation.

In our experience with the Commission it is – one of the reasons why in some cities desegregation has not worked is that people involved have felt that the only obligation is to bring the children together and that is it, whereas there's a good deal of preparation that has to be done, good deal of work after the physical desegregation has been accomplished to make sure it works. So it would depend – I would hope that the City of Detroit and people involved would be sufficiently enlightened so that they would take the steps [514] necessary to make sure that desegregation works and that it is quality eduaction for children of all races. But that would depend on what was done following the act of simple desegregation.

[515] THE COURT: Well, it's a phrase I've used before, maybe I can use it again and maybe it expresses your view. I take it if I can paraphrase your answer that you can achieve integration of the schools in this city or any other simply "by the number"?

A. You can accomplish desegregation simply by the numbers. But just ticking off the numbers doesn't necessarily mean that it's going to work and that education is going to be as good as it should be for all children or that you can avoid problems. You got to take the steps necessary to avoid the problems and to, if anything, improve the quality of education that the children are getting. That is the act of physical desegregation is the first thing. It is

an essential pre-condition to successful desegregation because without it you don't have desegregation at all. But it's only a first step.

MR. RITCHIE: Thank you, your Honor.

I would ask one question of the witness. He stated that 90 per cent of the children in Washington, D.C., school district are black and yet the population he referred to as being 75-25–

Is that correct?

A. That is my impression, Mr. Ritchie, yes.

Q. I dont understand how you can have such a disparity in the public school population with those statistics if they were [516] accurate, how you could have a 75 per cent white population in the city and have a school system, a public school system where 90 per cent of the students were black.

A. You misunderstood. That's in the metropolitan area, say in the metropolitan area the population has consistently been 75 per cent white and 25 per cent black–

THE COURT: Yes. He is using a different base for the figures.

MR. RITCHIE: I see.

A – in the District? The population as I understand it, the population of the District of Columbia is now roughly 70 to 75 per cent black and 25 to 30 per cent white. So there is still something of a disparity in the percentagewise in the school but not nearly as great as reversing the figures.

Q. Are you familiar with what the school population of the City of Washington, D.C., was with regard to the racial balances far back, say as ten years ago, when you were first active in this movement?

A. I can give you a rough, a rough estimate, recall vaguely it was relatively high. It was something around 80 per cent black or possibly a little more.

Q. It has declined since that time?

A. The percentage of black students in these schools has increased.

MR. RITCHIE: I have no further questions, [517] your Honor.

MR.FLANNERY: May it please the Court, I would like to make two very brief points with respect to Mr. Sachs objection concerning what the responsibility of the School Board may be. I can only reiterate, and I am quoting from Mr. Bushnell as Mr. Dimond did. It was Mr. Bushnell who said in August that while it is true that the concept of neighborhood schools may not be invoked as an excuse where Negroes are excluded from residence in particular areas, citing cases, plaintiffs can offer no evidence of exclusion of Negroes in any residence in the City of Detroit.

I think the Court has observed this in part through–in part the thrust of this testimony.

Secondly, your Honor, I like to note for the record that other courts as a matter of releif have addressed themselves to the viability of metropolitan solutions, and if this record should disclose that school children in the City of Detroit can not be afforded equal protection of the laws, equal educational opportunity, measured against the requirement of equal protection of the laws, we have the State as a defendant in this action. We are not prepared to concede, your Honor, that a metropolitan solution would not be viable or would be inappropriate.

MR. VON ENDE: Your Honor, I simply ask the [518] purpose of the oral argument that Mr. Flannery has given today. Am I to understand that there is a pending exhibit which this argument is germane to? Or was this simply a position statement that we were favored with sua sponte?

MR. FLANNERY: Not sua sponte, Mr. von Ende.

THE COURT: I took a long lead off first base and as a result he is making motions.

MR. VON ENDE: Your Honor, unfortunately it's Mr. Bushnell that he is trying to put out at the plate and he is not here to defend himself.

MR. FLANNERY: He is ably represented, Mr. von Ende.

THE COURT: I hope, Mr. Flannery, that is not a threat because I am having enough to do with my limited jurisdiction in this case, and I am not one for expanding it.

MR. FLANNERY: Well, we want to see what the record will show, your Honor.

THE COURT: Yes.

MR. FLANNERY: Probably it's neither a promise nor a threat at this writing.

THE COURT: All right. You may step down. Thank you for your testimony.

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[522] JAMES A. BUSH

thereupon resumed the stand as a witness on behalf of Plaintiffs and, having been previously duly sworn, testified further as follows:

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Q. When you left after one of our interruptions, for which I apologize, we were talking about the Corporation and Securities Commission. I hand you a document marked Plaintiffs' Exhibit 59. Could you tell me what it is?

A. This is –

MR.BUSHNELL: (Interposing) 5-9?

MR.DIMOND: 5-9.

A. This is the red book. It is the real estate license law and rules and regulations of the Michigan Corporation and Securities Commission Real Estate Division, for the year 1946.

Q. Could you describe, on the paper clipped page, what the statement of the Corporation and Securities is?

A. Yes. This is page 22 and it says, "Code of Ethics":

"The foregoing real estate law and rules and regulations promulgated –"

MR. BUSHNELL: Before it is read, I suggest it should be offered as an exhibit.

THE COURT: Yes. You identified it. [523] Before we use it offer it to counsel.

MR. DIMOND: I think I showed it to them previously. I will do it again.

MR. BUSHNELL: I will object on behalf of Defendant Board of Education on the ground that it is clear hearsay. It is remote in time. It is not binding on Defendant and that Defendant Board is not shown to have any connection whatsoever. Its competency is in question. It is irrelevant and immaterial.

THE COURT: What is the purpose of that?

MR. YOUNG: We would also object on behalf of the State Defendant. What is the purpose of it?

MR. DIMOND: The purpose for which this is being offered is that it is an official document of the Michigan Corporation and Securities Commission and in it it makes a statement about the Code of Ethics and I would like to have the witness read that statement about the Code of Ethics and then the pertinent portion of the Code of Ethics which is quoted in this document and I think it will show your Honor a statement of policy by the Corporation and Securities Commission in support of the racial occupancy requirements.

[524] THE COURT: The objection is overruled. The authenticity is not questioned?

MR. BUSHNELL: No, we don't question the authenticity of any of these exhibits that have been displayed to us previously.

THE COURT: The objection is overruled.

MR. VON ENDE: Might we still see the exhibit, your Honor, before it's referred to?

MR. DIMOND: Yes.

THE COURT: I assumed you had.

MR. DIMOND: Well, we had not.

MR. BUSHNELL: We have seen the exhibit in toto, sir. The specific pages have not been examined closely.

MR. DIMOND: I showed them to all counsel yesterday during the break that were here.

THE COURT: And you propose to have the witness read from what pages?

MR. DIMOND: Page 22 and then one line from page 25.

MR. BUSHNELL: May I ask if the entire document is being introduced as an exhibit or only pages 22 and one line from 25?

MR. DIMOND: The entire document is, your [525] Honor. But we would be glad to leave the markers in.

MR. BUSHNELL: Finished, Carl?

THE COURT: Mr. Sachs?

MR.SACHS: Excuse me. Has the date of that document been noted on the record?

MR. DIMOND: 1946.

MR. SACHS: Thank you.

Q. (By Mr. Dimond) Could you read that?

A. Yes. On page 22, it says "Code of Ethics. The foregoing real estate law and the rules and regulation promulgated by this commission constitute a code of conduct which brokers and salesmen must observe. In addition, however, brokers and salesmen ought to observe a code of ethics. This commission subscribes to the code of ethics which has been adopted by the National Association of Real Estate Boards, and for the information and guidance of brokers and salesmen, said code is printed below."

Now Article 34 in Part 3 –

Q. On page?

A. Twenty-five of this book says, "A realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy members of any race or nationality or any individuals whose presence will clearly be detrimental to property values in that neighborhood."

[526] MR. DIMOND: Thank you.

MR. BUSHNELL: For the record, there is nothing in this testimony or from the exhibit being read as showing that this is binding upon anyone, and specifically not binding upon the state.

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[558] Q. Thank you. I show you Plaintiff's Exhibit 25, which has already been introduced into evidence. At the time of that document did the commission hold hearings on the Fair Neighborhood Practices Ordinance and did it come to conclusions about the practices that it had been investigating?

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A. Yes. The commission did hold numerous public hearings on the effectiveness of the Fair Neighborhood Practices Ordinance and they heard testimony from many persons from neighborhood associations, community councils, real estate brokers, and so on and so forth and the conclusions that it reached were that there were racial policies being followed in the marketing of real estate and that persons seeking homes were being sorted out by the real estate industry according to their race and that black home seekers were invariably channeled into the areas in which black families already resided and that there were efforts to channel all white home seekers into areas in which black families did not reside.

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[574] CROSS-EXAMINATION BY MR. YOUNG:

Q. I'd like to hand the witness Exhibit 59 and at page 22 ask him to read just the first sentence.

A. This is under Code of Ethics. It says, "The foregoing real estate law and the rules and regulations promulgated by this Commission constitute a code of conduct which brokers and salesmen must observe."

Q. Thank you. Have you ever attempted to ascertain whether the National Code of Ethics was inserted in the Michigan Administrative Code?

A. I personally have not done that.

MR. YOUNG: I would ask the Court to take judicial notice of the fact that the Code of Ethics has never been in the Michigan Administrative Code as part of the legally enforceable administrative rules of the state agency, Michigan Corporation and Securities Commission.

Q. (By Mr. Young) Have you attempted to ascertain whether Article 34 of the exhibit, I believe at page 25, appeared after 1946 in the Michigan Corporations and Securities Rules and Regulations pamphlet?

A. I know for a fact that the version of the red book that was published in 1948 contained a different Article 34. The language was changed.

[575] Q. Was there any reference to race?

A. No.

Q. Do you know about any subsequent versions of the pamphlet containing the rules and regulations of the Michigan Corporations and Securities Commission that include the Code of Ethics?

A. The 1953 edition contained the Code of Ethics but with revised Article 34.

Q. Do you recall whether in the 1953 edition there was any preamble regarding the statement by the Commission as to the Code of Ethics?

A. As I recall, it's similar to the language here.

Q. No, not the preamble of the Realtors Association, but a preamble regarding the position of the Corporation and Securities Commission.

A. Well, I don't have any specific recollection concerning that.

Q. Since 1953, to your knowledge, has the Code of Ethics ever appeared in any subsequent pamphlets put out by the Michigan Corporations and Securities Commission?

A. I do know that the red book that has been promulgated in recent years by the Department of Licensing Regulation, the Real Estate Division, does not contain the Code of Ethics of the National Association of Real Estate Boards.

Q. Now, did you ever attempt to find, as you put it, red books subsequent to 1953 that included the Code of Ethics?

[576] A. No, I haven't looked for that.

Q. You haven't looked, but yet you know it's not there? All right.

A. Well, I have in my office a copy of the rules and regulations of the Real Estate Division of the Department of Licensing and Regulation from 1966 through '67, and that does not, I know for a fact, does not contain the Code of Ethics of the National Association of Real Estate Boards.

Q. Since the 1953 pamphlet, have you ever seen a rules and regulations pamphlet of the Michigan Corporations and Securities

Commission or now licensing and regulation that contains any portion of the Code of Ethics since the 1953 publication?

A. No, I have not.

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[588] . . .

Q. In the public housing projects, let's take, for example, Brewster Douglas. What is the racial composition of Brewster Douglas today?

A. There are two white persons residing in Brewster Douglas today. The rest of them are black.

Q. Is the same pattern true for Sojourner Truth?

A. I don't know of any whites residing in Sojourner Truth.

Q. Based on your knowledge of the statistics of the public housing project has the racial identity of the project – do you [589] have an opinion whether that racial identity has persisting effects?

A. Most definitely it does. The project originally designated for black occupancy has persisted to this day and has totally black occupancy. The two white residents of Brewster Douglas are Catholic nuns who are doing a kind of live-in social work, is what they have told me.

Q. In the private housing market you mentioned that 6,500 homes changes hands from white families to black families approximately every year in recent years?

A. Since 1950, yes.

[590] Q. Where are those 6500 homes located? Do you have an opinion on where they are located?

A. Yes, in the sections of the city on the map there that range in color from green to blue to orange to red.

Q. Of these 6500 homes how many of them each year, approximately, were in the previously all-white neighborhood?

A. Well, the areas west of Livernois with the exception of the area between the railroad tracks and Livernois, going down to the Dearborn border, contain few, very few, just a handful of black residents except for the Eight Mile, Wyoming area in 1960. But,

since 1960 thousands of homes have changed from white occupancy to black occupancy moving progressively westward from Livernois to Wyoming to Schaefer. There are some black families living as far west as Southfield at the present time with an occasional black family that lives west of Southfield. Some of them bought repossessed houses but there have been some private sales to black families west of Southfield. Outside of the two public housing projects we are still talking about less than 100 or 200 persons west of the Southfield Freeway but there is considerable real estate change visible on the streets east of the Southfield Freeway and there is a neighborhood succession in those neighborhoods east of the Southfield Freeway particularly up toward the northern border.

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JOHN S. HUMPHREY

was called as a witness on behalf of the Plaintiffs and, being first duly sworn, testified as follows:

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[591] . . .

THE WITNESS: John S. Humphrey.

DIRECT EXAMINATION BY MR. DIMOND:

Q. What is your present occupation?

A. I am a real estate broker.

Q. How long have you been in the real estate business?

[592] A. Since 19 – as a broker since 1950.

Q. Before that?

A. Four years as a salesman.

Q. How long have you lived in the City of Detroit?

A. Since 1938.

Q. Are you a member of any real estate association?

A. Yes, sir, the Detroit Real Estate Brokers Association.

Q. How long have you been a member?

A. Since I was a salesman, 22, 23 years.

Q. Have you held any executive positions in that Association?

A. I was president for four years and I have been executive – I mean legislative committée chairman about 11 years total.

Q. Are you a realtor?

A. I am not a realtor.

Q. Could you explain why not?

A. When I joined the Real Estate Brokers Association, the realtors was a white organization that did not allow black membership at that time.

Q. [593] (By Mr. Dimond) And is the Detroit Real Estate Association a black realtor?

A. It is black.

Q. I see. When you first entered the real estate business in the early period 1937 through the '50's, what practices did you run into in attempts to sell?

A. All the practices was simple. Blacks had areas that we were limited that we could buy and operate in. And it's just a matter of black and white.

Q. Did you ever run into any incidents when you tried to break that pattern?

A. Yes, I did.

Mr. Bushnell: If the Court please, a continuing objection as to Mr. Humphrey's testimony.

The Court: The objection is overruled.

Q. (By Mr. Dimond) Could you answer that question?

A. Yes. I did encounter problems.

Q. Could you give us the types of incidents and their location and approximate dates, if you could?

A. The most serious, I think, was 1952 at 18176 Riopelle and across the street at 18199 Riopelle, where we sold black families. The first one lived a year without incident, and when we sold the second family, black that had children, and the man was a factory worker, apparently the neighbors objected [595] and thought that this was going too far, and at that time they broke out all the

windows in the house and harassed the family. And subsequent to this, a police car was placed there around the clock. And while the policeman was there, they threw snakes in the basement and frightened the people to the point that they – the lady had a nervous breakdown and had to move out.

Q. Were you involved in these incidents?

A. Only to the extent that I made the sale of the property and visited the area when this harassment was going.

Q. During your visits, was any harassment directed at you?

A. Yes, sir. Police officers, plainclothes, in the presence of neighbors stopped me and yanked the door open from both sides--car--grabbed me on the shoulder, pulled me out and told me to put my hands up. And I said, "Well, what is this all about?"

You know, I knew they knew who I was.

He said, "Put your hands up."

I said, "If you want to search me, you take me to the station."

And he grabbed for his gun. And I think I come as close to getting shot as I have been in my life. I think that's the closest time I've been to getting shot in my life.

I stuck them up in a hurry and he patted [595] me – and all type of harassment.

This was typical because of the fact that I was in the area where this incident happened and I happened to have been the real estate man who made the sale.

Q. But for these two homes, was this a white area?

A. It was all white prior to this.

Q. Did these type of instances occur elsewhere at other times?

A. Oh, yes.

Q. During the '50's?

A. During the '50's and – yes, during the '50's primarily.

Q. Could you describe any of these other incidents?

A. About 1955, I believe, we sold a house on Riverview-Seven Mile Road. This was a repossessed house owned by the Veterans Administration. And when the black family went out to clean the place up to move in after closing the sale, they left in the evening, and house caught fire. And the VA restored it, and it was considerably damaged, three or $4,000.00 worth of damage.

They fixed this, and they were cleaning the next day to move in and then seven fires – it was obvious that it was arson – were set in this house.

At this time I had written a letter to the Veterans Administration in Washington, locally and everyone for some kind of protection and the destruction of government [596] property. At this time I was getting calls during this period from people in the neighborhood. And one man did identify himself. And after the second fire he called me and said that the FBI knocked on his front door, and when he answered the front door, they kicked in the side door and the back door and searched his house from the basement through, looking for evidence of this fire. And he said two other neighbors – and he didn't identify them – the same thing happened to them that night.

Q. Did you ever have occasion to have listing cards with the notations X and XX on them?

A. Yes, I have. I have seen those of other brokers.

Q. And what are those cards?

A. The X and XX would denote the race. The X is white; the XX is black.

Q. Where do you have most of your listings over the entire period of your operation?

A. My office is on the east side, buy many of our sales have been northwest, kept up with the movement of the turnover.

Q. Are most of your listings in either black areas or changing areas?

A. All in black or changing.

Q. Have you had difficulty getting listings in white areas?

A. Yes.[597]

Q. Could you describe some of those difficulties?

A. There is a little more sophistocation used today if we attempt to get a listing. But primarily, I think, at this point we are handicapped because in the periphery of every area that there is

integration movement on the outside of this, we are sent the results of the Brickley Amendment, I think we call it that, the Fair Housing Act, that says you can't solicit, and that is used on persons that they don't want bothering them. There's always someone in there.

Q. Do you ever co-broke with white brokers in the changing and black areas?

A. I found this to be something that – if it's not in a changing area, in an all black area, you don't get much cooperation. And it's easy to circumvent simply by saying that "We got something tied up on it; we have somebody interested." And if we find that the house is there much longer, we can go around behind them and get somebody to call on them and they'll show it to them. We've had many instances like this until it's a waste of time.

Q. Could you explain what co-broking is?

A. Co-broking is to cooperate with another broker who has a listing, a broker that has a listing. And if I want to cooperate with him, to show my customer, we split the commission.

Q. Now, you said that you would have somebody go around and check.[598] Would that somebody be white who would call?

A. Yes.

Q. And then the house would be shown?

A. It would be shown and they wouldn't know anything about the sale on it, and this is quite typical of the cases that we've tested. Does it cost you money to try and get housing for black clients in white areas?

A. Absolutely. There are, I found, people who honestly would not care who they sold to if they thought they wouldn't get in trouble. And this is the way they express it,"Would I get any trouble if I listed my house with you, and if you knew who you was going to sell it to, if you sold it to a black, would that mean trouble for us?"

We've had a number of cases where the people – all of this when somebody wanted to sell and you're trying to give service – well then, if you don't get it you lose a lot of time, and that's money in this business. In fact, I'd given up on it out of disgust and knowing that I can't keep a business if I continue to try to work in the predominantly white neighborhoods, to try to find that one that's brave enough to let me have his property and try to sell it for him.

Q. Now, over the history of these years, have you come to conclusions about this process of giving up? [599]

A. I – I have. I at fifty-four – I started out thinking that I could help to correct the situation by putting all of the effort that I could and giving people an equal opportunity in the housing market, and there are so many evasive ways that people can use to avoid, even though the law says that you can't do it, until it's a loss of time and money. And you just can't make a living doing it. And everyone that I've ever had been involved in cost me alot of time and money, cost me money. For everyone of those incidents, and I've got lots of them, they cost me a wad of money because of them. Police harassment was the biggest one, taking my license and trapping me. And every time I get one of these and my name goes on the paper, I start getting tickets for doing the same thing I'm doing right now, and it's no coincidence.

Q. Does it have an effect on your clientele?

A. There are people that would not list with me if I'm the first one to sell. The realtors recognize that, because they used to not sell the first house in the block. In fact, some of them wouldn't sell until the third house is sold to black before they would make a sale.

Q. Now, when you use the term "realtor" –

A. That's the white organization.

Q. Okay. Fine. Have you yourself had an experience recently in trying to purchase a home? [600]

A. Yes, I did.

Q. Would you describe for us that experience?

A. We wanted a large lot, and my wife didn't want stairs anymore. And so we decided that we wanted a ranch home with some land around it, and we just wasn't able to find one available in Detroit that we wanted. And so we went to Southfield, and we looked Southfield, Bloomfield, and various places. It was rather comical some of the experiences that we had.

I'd like to point out that I would not take my children with me. My wife and I were conditioned on what we were going to run into and the treatment that we were going to get, and we got just about what we knew we were going to get.

We went out in Bloomfield Hills. They advertised in the paper a piece of property that was for sale. We had no idea that we were

going to buy it but just look at it. My wife just said, "See what it is." $85,000.00.

We go there and the salesman on the scene comes in and he speaks to us, and he said, "Well, I don't know why you'd want to buy this house because it floods every time it rains, a good heavy dew and things flooded all over." And he said, "It's in bad shape, bad location, the sewers, the water –" and he gave us any number. And all he did was follow us around and we were laughing because we knew. [601]

Now, this should have been embarrassing for me because he didn't know if I could afford to buy it, but the idea was to try to prevent me from wanting to buy it.

Q. Is this typical of some of the things that you've run up against throughout your business?

A. Another case I've run into and looked at a house in Southfield, and I asked the gentleman who had an open house there if we could come in and look at it. He said, "Help yourself. Go ahead."

We looked around, and I asked him, I said, "What's the price on this house?"

He said, "65,000.00."

Well, I knew that was high, knowing a little about housing. So I said, "Well, we think we like it and might be interested in it."

He said, "Well, people in Florida now and I've had two other people who might already decide to take it and then they might take it off the market."

Two blocks away I went, another company. The same company had another salesman, a young fellow. I went in and looked at his. And I thought he was the most honest of all that I had gone around. He showed me a house, and he also had his listing book there laying on the table, and I know what they are. I know what to look for. [602]

Q. Would you describe what a listing book is?

A. Listing book is where they have the listing of these properties with the photo and with the information and the price on them. And he showed me through the house, gave me the price on it. It wasn't what we wanted, and so I asked him about the one that we had just looked at.

He turned the page over there and it was $45,000.00 not $65,000.00.

And these are the kind of things that is a waste of time and effort for me to try to go in a white neighborhood because it's too costly.

Q. What year was this?

A. 1968.

Q. Were you able eventually to get a house in Southfield?

A. Yes. I went in to look at a house. A company showed it to me. We met by appointment and showed it to me. And I made them an offer on the house. Everybody thinks he's paying too much, so I made an offer. Being in the business, I thought I could see if I could get it cheaper. We were going to buy it even at the price, but we made an offer. We submitted an offer.

Three days later I get a telephone call from the owner who recognized me, I had sold some fifteen years ago some commercial property for him and didn't remember him, [603] didn't remember the name. And he asked me if I had shown any interest, submitted an offer.

I said, "I got an offer on your place. I given it to him. I knew it was an offer."

And so he said, "Well, they haven't submitted the offer to me. The company didn't submit the offer."

I said, "Well, they got an offer and $1,000.00 deposit."

And he said, "Well, if I don't get the offer," he said, "you can deal directly with me."

Well, this would have been the most unethical thing that one could do, even though I asked them to show the listing with - share the commission with me, which they refused to do. But even at that rate I wouldn't go directly with the man.

I called them and told them the conversation, and I advised them, I said, "Now, this man has called me and asked me if the offer had been submitted and said that he could take my offer and told me if you didn't present it that I could bring him an offer direct. Naturally, I'm not going to do anything like this." And so my offer was accepted.

Q. Had that company previously made any representations to you about whether the offer had been made?

A. They told me the offer had been turned down. [604]

Q. Are these types of practices that you've just described the

types that you've run up against when you try to get houses for your own clients in white areas?

A. This is the case. It is not unusual that when in an all white area, when white person would seek me out – my picture is in the yellow pages – and they have got a price tag on the property that is unrealistic and nobody can sell it for them, so they get mad with the real estate man because he can't sell a house for more than it is worth, so they call me. And now I can get that kind of a listing that nobody can sell. But this is the type I'm talking about, a waste of time and effort.

Q. At the present time, given the history of your dealings in the market, are you still having these types of difficulties?

A. I stay away from them. I've been – I've been licked, and I just don't like wasting my time and my effort. And I don't like taking people like a doctor I took out in Livonia, I believe it was, Livonia or Taylor, I think it was Livonia, I don't remember now when one town stops, able to buy and pay cash for a piece of property and walk to the door and the man is there and when you start to go in he comes out, closes the door and said, "We're closed."

And I said, "Well, I've got some customers here and I'm a real estate broker and they want to see the [605] model because they're interested in buying."

He said, "I told you we're closed," and he walks on around.

And this kind of thing was not bad for me because I'm immuned to it, but it was so embarrassing to him, until I asked him to let me initiate a case for him, and he says, "I wouldn't want to be connected with it, you know, I'll find some place else."

He ultimately, subsequently purchased in Palmer Woods. But he was – he was embarrassed.

Q. Are you a member of a multi-listing now?

A. The one, black realtors.

Q. What is the name?

A. Metro unilist.

Q. When was that created?

A. Two years ago.

Q. Why was it created?

A. For the reasons that we didn't have people in the realtors

that – and then those I understand that got in the realtors, I'm not a realtor, so I don't know the whole story, were not permitted to get in the unilist, I think they called it in their case, for some time.

I understand now that one of the black brokers is a part of the unilist in North Woodward. He has an [606] office in Southfield.

Q. Could you explain what a multi list is?

A. Multi list is one that every listing that goes, that a broker gets, he passes on to all the other brokers that are members of the organization. They interchange these properties, give this information on property that we list, we turn over to our fellow brokers.

Q. For the metro unilist, which is the unilist for which you're a member?

A. Yes, we use the same method.

Q. Where are those listings for that that you've been able to secure?

A. Inside Detroit, in changing areas, neighborhoods, in all black areas.

Q. And once again, for the record, the Detroit Real Estate Board is in the past a predominantly white organization?

A. Right.

Q. And recently has permitted some blacks in?

A. That's right.

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[665] CHARLES S. SYPHAX

was called as a witness on behalf of the Plaintiff and being first duly sworn testifed as follows:

THE COURT: Your full name, sir?

THE WITNESS: Charles Sumner Syphax.

THE COURT: Spell your last name.

THE WITNESS: S-y-p like in peanut – h-a-x, like in X-ray.

THE COURT: You may be seated, sir, in the witness chair and speak loudly.

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[667] . . . .

A. Most of my business is done on the east side of Detroit.

Q. And in what parts is this?

A. Oh, from the river to Eight Mile Road.

Q. And what is the racial composition of the area in which you do most of your work?

A. It fluctuates. Most of my business is done in racially changing areas.

Q. Have you tried to do business in all white areas?

A. Yes, I have.

Q. How many clients have you had who have requested you to look for homes in those areas?

A. I would say that including the requests that my sales force has received, I'd say about 200.

Q. And have you attempted to get homes for these persons?

[668] A. By all means.

Q. And by what ways?

A. Telephone solicitation, mailings, canvassing, individual door-to-door canvassing.

Q. Do you also attempt to co-broke?

A. By all means.

Q. Do you co-broke with white realtors in the areas where you do most of your business?

A. Most of my business is done through my own office. On occasion there might be properties that are available or offered by my white counterparts that one of my clients has an interest in.

Q. And where are those properties located?

A. Usually in the changing areas.

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[668] . . .

Q. What areas, let's put it this way: When you co-broke, when you attempt to co-broke in the white areas, what is your success?

[669]A. I haven't had success as of yet.

Q. What happens?

A. Usually there is a pending deal on the property.

Now, my problem is this, that many of the real estate firms around the city are aware of me. They know of me or they know me. When I announce the name of my organization, then immediately – I think – well, it's recognized that I'm a black man. It is also assumed because I am a black man that I have a client who is interested in this property that happens to be in the white neighborhood.

Now, there is no way to disprove the fact that there is a deal on a piece of property. This has been my experience up to this point.

Q. And this occurs in the white areas?

A. That's right.

Q. But in the changing areas you have greater success?

MR. VON ENDE: Excuse me.

A. Yes.

MR. VON ENDE: This is the most leading question that Mr. Dimond has had all day.

MR. DIMOND: Excuse me.

Q. (By Mr. Dimond) Would you describe the relationship between the two areas with co-broking;

A. Yes. There is very little resistance in the changing areas. [670] The white brokers are most cooperative in the areas that show a pattern of racial mix.

Q. All right. Could you describe the experiences you have when you solicit by telephone?

A. Certainly. Well, what you are trying to find out when you solicit by telephone is whether a party is interested in selling their home. It's as simple as that.

You make numbers of phone calls, hoping that the next phone call will be one that is successful. If you phone enough, as I do, you get appointments by phone, that is people who express an interest in selling their homes.

You make appointments, you go out to the home. And depending on their situation, you either list the home or you don't list the home.

Now, it's been my experience that in – that when I canvass in the predominantly or all white areas, I have been able to make by phone appointments with the person on the other end of the phone has indicated an express desire to move because of job relocation or other circumstances.

I would assume, and this again is an assumption, because of my name and because of my delivery there are times when you can't determine whether I'm a black man or not over the phone.

I make these appointments. I go out to [671] the homes, and I would say that 100 per cent of the time in the white areas I'm received sometimes courteously, sometimes – most often – with great surprise. But not one time have I been able to make a listing or complete the listing agreement or the appointment.

Now, the thing that distrubs me is the fact that in rechecking these homes I find that oftentimes, shortly thereafter, a white counterpart has the home offered for sale. I've been told that the plans have changed. This distrubs me no end.

Q. What is your experience with door-to-door canvassing in these same white areas?

A. That's a real experience. It's kind of threatening. (Laughter.) I do it only on bright days when I have good shoes because there's a great deal of hostility in the areas.

I've been threatened with firearms. I've had groups approach me.

Recently, in the Chandler Park area, was canvassing door-to-door because of request, and I knock on this particular door. A gentleman came to the door and was distrubed that I was inquiring about his home.

I left the door, was approached shortly thereafter by a man who accused me of being a nigger blockbuster with the express intent of chasing all of the good white people [672] out of the area so that we blacks could ruin the area and I could make a fortune.

This is a mild example of some of the episodes that I've been confronted with in trying to place people in these areas. And again, I resent the fact that I've been called – I'm called a blockbuster. What I'm trying to do is place qualified people in homes of their choice, no attempt to blockbust.

Q. What has been your experience with these 200 black clients that you've tried to place since 1967?

A. Some I've sold homes to in other areas, some have gone on to other brokers, and I don't know of – of their adventures after they left my office.

Q. Have you placed any of these 200 persons, approximately, in white areas where you attempted –

A. Not yet.

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[686] . . . WILLIAM L. PRICE

was thereupon called to the stand for and on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

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[695] Q. What was the recommendation of the Urban League as to the area of distribution of other people in this relocation?

A. It was the recommendation of the Urban League to the City of Detroit to seek to accommodate these families that were interested in the private housing market by finding or assigning them to find housing that was outside of the ghetto areas and to generally seek a wide or spacial distribution of the families in the affected area throughout the geographic area of the City of Detroit. [696]

Q. Was that the recommendation of the Urban League followed by the city?

A. No, it was not.

Q. Do you know why?

A. May I continue?

Q. Certainly.

A. As a matter of fact, what happened here was that the families were placed for the most part by the City of Detroit, I am speaking now of families that were seeking housing in the private market as distinguished from families that were interested in public housing accommodations. Those families were placed for the most part by the commission in housing units that were located on site.

Q. By "on site" you mean within the redevelopment area?

A. Within the affected area.

Q. Would that be housing that had not been torn down from the redevelopment itself?

A. That is correct.

Q. All right. Was there any city policy that you know of at that time that prevented the recommendation of the Urban League being implemented?

A. At that time we had not achieved an open occupancy policy which event was expressed by the Detroit Housing Commission.

Q. Can you explain that? [697]

A. Well, very simply, we sought and worked for many years back in the early '50's to encourage the city administration, the mayor's office, the common council and the Detroit Housing Commission, to adopt a policy which without qualification would give expression to an open occupancy policy in both public and private housing in the City of Detroit, but at that time we were unsuccessful in our effort.

Q. What was the policy of the city, specifically?

A. The policy was and I don't remember the policy verbatim now, I don't have it before me and I don't remember it verbatim, but the policy was not clear as to what the city's position would be. I can tell you what the practice is which might give you some, and give the Court some indication as to what the policy was.

Q. When you say the City you are talking about the responsible agency of the city, the Housing Commission?

A. Yes, I am speaking of the Housing Commission.

Q. All right, sir.

A. Because the Housing Commission is the one that adopted the policy. The practice was to place in the public housing projects black families in projects that were passively designated for black occupancy. The practice in the private area was of a hands off policy and do not disturb the racial characteristics of the neighborhood outside of those that were [698] composed of high black intensification.

The executive director of the Housing Commission at that time was a prominent member of the Detroit Real Estate Board.

Q. What eventually happened in terms of relocation of the people from the Gratiot redevelopment area?

A. Well, the most –

Q. (Continuing) I take it federal funding was restored at some later time?

A. Federal funding was restored and our findings were that the families that were seeking housing in the private market with marginal incomes sometimes pooled their resources and purchased housing in areas that were adjacent to the Gratiot redevelopment.

There were some families that were able to move out into other areas that had been occupied fairly heavily by black people. But for the most part those families who were renting sought housing accommodations in areas that were contiguous to the affected development area.

Q. What was the racial characteristic of the contiguous affected area?

A. Predominantly black.

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[705] Q. Was this a reflection of a difference in the discount at the local bank or at the financing by other institutions that might keep the permanent loan?

A. Well, it was reported that the primary investor as a rule did not care whether the applicant was black or white, but the differential was imposed by the local lender. The institutional in-

vestor did not care whether the money was black or white, but the differential was imposed by the local lender.

Q. Did you as part of this study do any investigation of Federal Housing Administration practices at this time?

A. In the various discussions that we had in our seminars, and I think that it has been documented, the history tells us that the Federal Housing Administration worked more closely with the pretigious and highly-acceptable Detroit Real Estate Board, and the documentation that I alluded to was the fact that the practices of FHA and the policies of FHA closely followed the practices and the policies expressed by the Real Estate Board.

Q. Directing your attention to another area, subsequent to the Gratiot Project, has there been any substantial public housing [706] or urban renewal development with public housing in the Detroit area?

A. In the area of public housing, the answer would be no.

Q. Are you aware of any attempts or any trend, from your experience on the Housing Commission, away from large projects to other types of projects?

A. Yes, I am aware of that fact, because we discussed it numerous times during my tenure on the Commission. And the philosophy is, and we have learned from the past, that it is not best for the people or the city to have these large high-rise constructions in public housing. Too many instances they're not the best thing for the children who reside there. And then, again, we have seen, and the records of the Housing Commission will attest to the fact that in too many instances they become crime traps with the high-rise construction in the elevator – elevators that have to go up these large heights. And we found that it was sociologically speaking unsound. So that what we sought to do was develop a program of public housing which would cause the placement of families who qualified for public housing into single-family units dispersed or scattered throughout the neighborhood. When I say neighborhood, I am speaking now in the larger sense of the Detroit Community or the Detroit neighborhood.

Q. Do you know whether or not the Housing Commission recommended some scattered site housing in areas, City of Detroit, that were not primarily occupied by black people?

A. A recommendation was made to the Common Council to the effect that we put into operation a program of scattered sites. When I say "we" I mean the Public Housing Commission. The Housing Commission in the area of public housing develops scattered site placement for families who are qualified for public housing.

Q. Were these sites in primarily white areas approved?

A. Some of the sites were in white areas and some of the sites selected were in areas that were occupied by black families. To the best of my knowledge, the areas that were recommended for public housing sites in areas that were occupied by white families principally were not approved.

Q. You mentioned the trend away from high-rise buildings, and you've also mentioned the scattered sites. Is there also a consideration of the number of units at a particular location, whether they be high-rise or not, that the Commission has dealt with?

A. There were recommendations made for the construction of multi-storied units to accommodate public housing applicants in areas that were outside of the inner city area or the Boulevard area, as it were. And this was met with resistance because the thinking was that the white families in the areas that were [708] being selected for such construction would find this highly objectionable.

Q. I show you a document admitted into evidence, Plaintiffs' Exhibit 18-A, which is the racial occupancy statistics in public housing. I direct your attention to page 32, and I ask you to examine the number of families as shown, various projects, and the racial composition, and tell me which projects by race have the largest number of units of family units in one location.

A. Well –

Q. There is a table in the front which will give you the code for those numbers, if you'd like to refer to it.

A. Well, a project which is identified as 1-4, and according to the ledger here or the identifying sheet, that's Herman Gardens Project. And Herman Gardens Project has a total of 2,014 white occupants and a total of 11 Negro occupants. And 1-7, which is

Jeffries Homes, has a total of 2,001 Negro occupants and 44 white occupants. The Brewster Project, identified as 1-13, has no white families and 697 Negro families.

Those are the larger numbers.

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[720] DONALD J. BAUDER

was called as a witness on behalf of the Plaintiff, and being first duly sworn, testified as follows:

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[735] Q. And this is a record of the Michigan Civil Rights Commission

A. Yes, it is.

Q. Who wrote the report?

A. I prepared the report.

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Q. (By Mr. Pressman, continuing) Where did you secure the information that is contained in the report that you said that you wrote?

A. I secured the information from my own presence on the scene, interviews with the Bailey family and others and growing out of my primary responsibility for the move-in of the Bailey family into Warren, Michigan.

Q. And what is the subject matter, briefly, of this report?

A. The subject matter is the chronicling of incidents of vandalism, harassment and intimidation that the Bailey family suffered as a result of their move-in into the [736] community of Warren.

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[737] . . .

MR. PRESSMAN: If the Court will indulge me for a moment?

It's further our position, your Honor, that incidents like this in the suburbs of Detroit to the extent they are publicized tend to dissuade black people within the City of Detroit who are living in the black residential areas, dissuade them from making efforts to move to areas that are integrated or that are all white, whether they be in the City of Detroit or in the surrounding suburbs.

It is further our position that the state is a defendant in this case and that the state has a responsibility under the Constitution to insure that black students in Detroit receive equal educational opportunities, and that it may be necessary in terms of relief to involve areas other than simply Detroit.

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[742] . . .

THE COURT: Just a matter of curiosity, you've been with the Michigan Civil Rights Commission since 1967?

A. That's correct.

THE COURT: Tell me this: Have you devoted your time and study to problem housing and segregation, would you say that the history of segregation, racially speaking, in the City of Detroit since 1967 down to the present time, has increased or decreased?

A. The prevailing pattern of segregation within the city limits of Detroit has not lessened. There's some areas that have changed in terms of racial composition, but in terms of those areas in Detroit which have been most resistant to change, those areas remain unchanged. I'm speaking of the northeast sections and the extreme northwest section and the southwest section. [743]

THE COURT: Well, maybe you didn't understand my question. Let's put it even more bluntly: is there more segregation in Detroit now than there was in '67 or less?

A. In '67?

THE COURT: Yes, when you first started working with the Michigan Civil Rights Commission.

A. Well, I would put it in these terms. In terms of the black population of Detroit and percentage terms it has increased so that would indicate, using that figure, that the segregation has de-

creased, but if you look at the areas of concentration the proportion of black to white areas has increased. That is, there are now more black areas in Detroit, all black areas in Detroit, than there were and that the all-white areas remain all white.

So that there has not been an increase in integration in the sense of balanced neighborhoods. There isn't a neighborhood in the City of Detroit which has stabilized in terms of white and black population. The neighborhoods are increasing in black population with the exception of the all-white areas.

THE COURT: Perhaps I shouldn't ask you this, but I am intrigued by it. We had a witness on here from I think Washington, and I gathered from his testimony that there was some validity to the conclusion that the more [744] governmental efforts expended the more segregation you get.

A. Well, I would not agree with that.

THE COURT: Well, as applied to Detroit, wouldn't you agree to it?

A. It is the type of governmental effort. If the effort is directed toward concentrating housing units with prescribed geographical locations, yes, I would say that is true. On the other hand, the options that governmental agencies have at the federal, state and local levels to deal with the factors of segregation and integration, which they are not exercising, suggest that all that could be done is not being done and I would say that that is true at all levels, federal, state and local.

THE COURT: I have no other questions.

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[751] CROSS-EXAMINATION BY MR. RITCHIE:

Q. Your name is Bowder?

A. Bauder.

Q. Thank you. You mentioned in your answers on the direct examination at least you made reference to blacks working in the suburbs. Do you have any statistical information readily available which would indicate the number of blacks who work in the various suburban communities but who live in Detroit?

MR. BUSHNELL: If the Court please, I must object to Mr. Ritchie's question. It is totally irrelevant and immaterial. This is a

suit about education, not a suit about employment in the suburbs.

THE COURT: This is cross-examination.

You may proceed.

A. Yes.

Q. (By Mr. Ritchie) Approximately how many Negroes live in Detroit but work in the suburbs?

A. I would isolate a figure to Warren and the plants in the Warren area. Approximately 20,000 minority employees.

Q. Would those by largely family men?

A. Yes.

Q. You said 20,000. Do you know how many of those would be family men with children in Detroit?

[752] A. No, I would not.

Q. Of those 20,000, how many live in the City of Warren?

A. Presently?

Q. Yes.

A. Well, the number of black families currently in Warren approximate five to seven. The only families who have moved into the City of Warren since 1965 have been the Dotson family in 1965 and the Bailey family in 1967. To the best of my knowledge that would be a professional assessment. There have been no additional move-ins of black families in the City of Warren.

Q. Do you have any figures, do you have any information which would indicate the number of black schoolteachers working in the City of Warren?

A. To the best of our information—

MR. YOUNG: I would object.

A. There is one black schoolteacher in the City of Warren.

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[754] ROBERT L. TUCKER

was thereupon called to the stand for and on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

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[766] . . .

A. I also feel a bit relieved. The causes of racial segregation, in my judgment based on my experience and my studies, are multi-faceted or numerous, but I would respectfully suggest that the essential cause is the only life that we as black and white people in the country have known. We have never known anything, at least to that extent of the problem, but segregation.

The cause then, I think, is related to the origin of the problem and the origin, I think, is in the original system of chattel slavery from which we have never overcome.

The matter of the state of black people in the entire city derived principally from that experience and has been different.

The development economically, [767] educationally, socially and culturally has been different and I would have to add the fact of his blackness itself, rendering black people highly visible, is a very crucial cause. It makes it possible.

Given that as a basis then, we must consider other forces that contribute to both the existence and continuing of the problem and I think the first force that has to be recognized is the entry of the United States Government itself upon at least the housing scene in the 1930's when it spoke to the problem which already existed at the time.

And the efforts of the government to meet housing conditions upon observation have contributed to both the perpetuation and extension of segregation and these are reflected in policies that were formulated as a part of the government's effort to meet the housing and to provide housing both in the private or conventional sector as well as what has come to be regarded as the public housing sector, more accurately described, in my judgment, as efforts to provide housing for poor people.

I think that these policies combined with the nature of the circumstances itself, I think, converage to be the major cause of segregation in housing today.

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[773] Q. (By Mr. Flannery) Mr. Tucker, what in your opinion is the relationship, if any, between racial separation of

schoolchildren without regard to how such separation may have come about and continued or future racial separation in housing?

MR. BUSHNELL: If the Court please, absolutely no foundation laid for Mr. Tucker's testimony on this point. If he has any expertise at all, it's in the field of housing. not in the field of education.

MR. YOUNG: There's been no prior reference to any involvement by him in education that would warrant such a question.

THE COURT: I think the objection is good, Mr. Flannery. You will doubtless have experts in the educational field.

MR. FLANNERY: May I be heard briefly, your Honor?

THE COURT: Yes, sir.

MR. FLANNERY: Perhaps the question is not stated as clearly as the Court would wish. Mr. Tucker has testified and I believe being qualified as an expert on the factors that underly housing segregation. My question to him essentially is whether school segregation in his opinion may [774] contribute to present or continued segregation in housing.

MR. BUSHNELL: Again, if the Court please, there is no foundation laid for school segregation. Now, if this is a general question as to the entire United States, I would have no objection. But if there is an assumption here that school segregation has been established, I object strenuously.

THE COURT: There is no such implication implicit in the question. As rephrased, the question is proper.

MR. FLANNERY: I apologize to the Court for my lack of clarity the first time.

THE COURT: Perhaps I didn't understand the first version of it, but as last framed by you, the question is proper.

MR. FLANNERY: Thank you.

THE COURT: The question is whether educational segregation has an impact on housing segregation?

MR. FLANNERY: Yes, sir.

THE COURT: That's your question?

MR. FLANNERY: Yes, sir.

THE COURT: I think that's a proper question. You may answer it.

A. I think the answer to the question is yes.

Q. (By Mr. Flannery) Can you elaborate for us, Mr. Tucker? How [775] would you describe or how would you articulate the effect?

A. These two are related, and we regard them as related in the administration of the departmental programs. To connect the request for – request by communities – for funding assistance for housing purposes are received and under existing regulations and guidelines must be received and reviewed by the department with a view toward whether the assistance provided and the housing established as a result of the assistance will be accompanied by in the case of observed deficiencies, additional amenities, referring to schools and education, and if not accompanied by in the case of observed deficiencies in that area, whether the program could be modified to make the housing requests consistent with existing schools, other sociological amenities necessary to a decent home in a decent environment, which is the departmental objective. They are related and they have an impact on one another, on each other.

Q. Mr. Tucker, in the course of your duties with the Department of Housing and Urban Development, did you have occasion to study or inquire into the relationship between minority employment in the suburbs of Detroit and minority residency in such suburbs?

MR. YOUNG: I would object to that, your Honor, irrelevant, outside the scope.

THE COURT: Objection is overruled.

[776] He may answer.

A. The answer is yes.

Q. (By Mr. Flannery) Can you state for the record, Mr.

Tucker, what communities in the metropolitan area was the subject of your inquiries?

A. The subject of the inquiries were all communities that are a part of the standard metropolitan statistical area. The communities that received specific and particular attention, given judgments as to the best deployment of resources and manpower were those communities where there was a high degree of employment and high degree of minority employment and an observable degree of low minority residents.

Q. Can you name some of them for us?

A. Among them would have been the cities of Warren, Michigan, Dearborn, Michigan, Grosse Pointe, Highland Park, Ferndale, most of the communities, suburban communities around the Detroit area that had some degree of industrialization involved. I should have stricken, I suppose, Grosse Pointe. I'm sorry.

Q. What were you attempting to find out?

A. Whether there was a relationship between the incidence of high minority employment and the low incidence of minority residency and whether or not that was based upon to any degree discrimination on the basis of either race, color, religion or national origin.

[777] Q. How did you go about trying to find it out, Mr. Tucker?

A. The technique was to utilize the – more accurately was to employ the approach established by Section 809 of the Title Eight of the Civil Rights Act of 1968. The vehicle estabished by that provision is one that requires the secretary to move to the communities, to engage the state and local officials in on going discussions about the conditions that are observed for the purpose of determining in the language of the statute the extent to which, if any, discrimination exists and the procedures and methods – paraphrasing now – by which the problem can be eliminated.

In discharging that responsibility, in the fall of 1969, we selected from each program element of the Department of Housing and

Urban Development, meaning from the Urban Renewal Department, from the Model Cities Department, from FHA, from Metropolitan Planning and Development, all technical people who have anything to do with providing goods and services to those communities. And on the team was an Equal Opportunity person who went into the field, surveyed the conditions, talked to the officials, talked to the residents and returned to the regional office with their findings and reports.

On the basis of this field examination, to used an overworked government expression, "task force [778] undertakings," we decided to then concentrate our efforts on those communities that had in fact applied for federal funds.

Now, I think to make a distinction, under Title Eight, Section 809, the obligation of the secretary is to do this irrespective of whether the communities have asked for federal funds or not. That must be ongoing.

It was determined then to combine this responsibility with the program responsibilities in the hope of having hopefully greater appeal, if not greater effect, but certainly being able to command the attention of decision-makers in the communities. And we arrived at our – our approach and our findings in this manner.

Q. Can you tell us, sir, in summary what findings with respect to the relationship, if any, between discrimination and low minority residence in those communities were reached by your investigators for your department?

MR. BUSHNELL: I'll stipulate that he found a direct correlation.

THE COURT: He may answer.

MR. FLANNERY: Thank you, your Honor.

If Mr. Bushnell has stipulated that there is a direct –

MR. BUSHNELL: It is not speeding things up. I withdraw the stipulation.

[779] MR. FLANNERY: We were close to our first stipulation.

(Laughter.)

Q. (By Mr. Flannery) Did you find that low minority residence resulted from discrimination, Mr. Tucker?

A. That was our finding.

Q. Might I ask, sir, whether a plan or a program was developed on the basis of your findings a perception of needs which was thereafter transmitted to or the subject of negotiations between any of these communities in your department?

A. The answer is yes. We communicated with the mayors of all the communities our concerns and findings, invited their participation in dialogue and discussions with the department, with respect to how the condition might be remedied and – I'm fearful at the moment, if I may – could I have the question readback, if your Honor please?

(The record was read.)

A. The answer is yes, and this is the manner in which we did it, a direct communications in writing and invitation to join us in dialogue about them.

[780] Q. Can you tell us, Mr. Tucker, to your knowledge whether any of the Detroit suburban communities as a result of those negotiations has embarked upon affirmative programs intended to produce racially desegreated housing patterns in their communities?

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THE COURT: Objection overruled. As I understand it your agency developed a program and then you communicated that to the responsible heads of these various units of government?

A. That is correct, your Honor.

THE COURT: The question is did anything come of it?

A. Essentially not.

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[786] . . .

Q. Mr. Tucker, can you tell us in your opinion, if you have one, how much housing segregation, if any, can be accounted for as the result of choices on the part of black people to live together and separate as a group from white people?

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[787] . . .

A. The opinion is that the degree of concentration that we see is accountable – strike that – can be attributed to a desire by minority persons to "live together" only to a minimum degree and certainly to no greater degree than that quality or characteristic would determine the housing choice of other groups.

Q. Thank you, sir. What is the basis for your opinion, Mr. Tucker?

A. We have studied the subject upon – well, prior to and certainly upon the assumption of all responsibilities with the Department of Housing and Urban Development. We examined most of the literature that is regarded as scholarly and respectable in the field. We have had occasion as a part of our litigation process and experience in the representation of persons who sought to exercise housing choices to examine the subject from the point of view of expert testimony and adducing that testimony in open court from experts and I think in all honesty, I hope I would be able to divorce subjective responses to that question.

I would have to admit that being black for forty-two years and having lived virtually nowhere else except in the areas of racial concentration despite efforts [788] to do something about that, we have an experience on which to draw.

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[793] . . .

Q. (By Mr. Ritchie) And I believe the substance of the study, while there is a high incidence of minority employment in some of the suburbs, it was a very low incidence of minority residence in these same suburbs?

A. In certain of them, that is correct, sir.

Q. Did your study lead you to make any conclusion as to where most of the members of the minority employees resided?

A. It did.

Q. And what city would they have resided in?

A. Essentially the City of Detroit, sir.

Q. And would your study further have concluded you to believe that these members of the minority group lived in this [794] particular portion of the inner city, which is the plaintiffs' exhibit?

A. Yes. Our data reflects the information which you and others have been relying on here.

Q. Did your study group give you any indication as to whether or not these members of the minority employees were family people, married men with families?

A. We found that they were substantially, numbers of them, yes.

Q. And like themselves, their families also resided in the City of Detroit?

A. Where we found family associations the answer was yes.

Q. And do you have any idea of how many of those minority employees have schoolchildren in the school district of Detroit?

A. I do not remember how many.

Q. Would it be a fact that large numbers of them did have schoolchildren in the City of Detroit?

A. It would be correct that a substantial number of them did.

Q. Now, with regard to the residence characteristics of other employees in the same industries located in the suburbs, did you come up with any conclusions as to where these other employees lived?

A. The study was calculated to determine essentially the circumstances as affected minorities, so that the information from [795] that particular study to which I referred did not necessarily

determine where other persons lived. Our on-going process of review of both program documents and complaints led us to the determination that the communities were populated essentially by persons other than black persons.

Q. You could not venture an opinion, however, that the employees who were non-minority were also residing in the communities where their places of employment were located?

A. We did not endeavor to determine where everyone residing in the non-minority communities were employed. We certainly recognized that a substantial number of them were employed in the same places as the minority employees, in the same industries.

THE COURT: Well, I think Mr. Ritchie's question was along this line: having located the industry, did you make any attempt to study or to report the number of non-minority, or white people, who were employed in that industry and who lived in the same municipality?

A. Yes. We were able to observe that substantial numbers of the non-minority employees resided in the same community.

THE COURT: I see.

A. I wanted to be sure that I was not understood to say, however, that we determined that the then majority of the residents of the non-white communities were employed in the same particular [796] industries. It's not the same.

THE COURT: Yes, I understand.

A. All right.

MR. RITCHIE: Thank you, your Honor.

Q. (By Mr. Ritchie) Previous witnesses for the plaintiff in this case, Mr. Tucker, have characterized the racial distribution as you see evidenced on that map in terms of what they refer to as racial containment. I presume you would agree with that conclusion?

A. I would.

Q. Would you also agree that the policy of the suburbs could be characterized as racial exclusion?

A. I would.

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[863] THE COURT: Let's find out.

(The last answer was partially read by the reporter.)

THE COURT: I didn't think that was your position.

A. Your Honor, that was a mistake and I would like to state for the record that is a misstatement. I meant school segregation.

THE COURT: I understand.

A. Thank you, sir.

Q. (By Mr. Lucas) Dr. Green, with respect to the child, the community and the teachers, would you elaborate on your answer, please?

A. In general black youngsters who attend very racially segregated school systems begin to develop very early in life the kind of self-perception that is very much in opposition to academic striving within school settings.

There is also evidence to support the point of view that teachers themselves who are assigned to segregated, specially-segregated black schools often are received as a negative school assignment. This in turn can lead to the kind of perception on their part which will not allow them to fully involve themselves in attempting to educate black youth in such settings. To a great extent the old selffulfilling prophecy is in effect. There is some data in an [864] article that I published and I could pinpoint it, which readily supports the point of view that classroom teachers do, when placed in all black or segregated systems, involving large bodies of black youth, tend to perceive this as a negative assignment.

Black teachers are under the conception that when they are found or placed in all-segregated black systems or in a segregated school, I should say, in a particular school system, do begin to feel and perceive that the resources for example that will be made available to them are not commensurate with the resources that are often made available to their white counterpart schools.

[865] Q. As an educational psychologist, not as a lawyer, how would you define a segregated school?

A. A segregated school might be defined as one in which an outside observer or any observer can readily identify the obvious characteristics of that school as a function of color, as a function of race.

Q. In terms of the educational employment opportunities available what effect is racially isolated, or racially separate schools, what effect does this have on the black child?

A. In terms of employment?

Q. In terms of his perception of himself vis-a-vis whites.

A. Kenneth Clark pointed out in a publication in his book Dark Ghetto that black youngsters readily begin to perceive very early, as a matter of fact as early as their elementary school days that when a school itself is racially isolated this is reinforced by the neighborhood which is racially isolated. The youngster begins to perceive very early in life that opportunities in the greater society are very restricted and will also reflect the restricted opportunities that are available to him, not only in that neighborhood but in the school as well.

Unfortunately in our society which yet tends to operate dual school systems both in the North and South, we find at the same time separate neighborhoods which [866] are also related to a great extent to dual school systems in America that youngsters can find available models of black youth who have gone through essentially segregated systems and have had employment opportunities after completing the segregated school system. There is a relationship though between the child who grows up in a system, a segregated school system, who perceives that opportunities are restricted in that particular system.

There are implications for that and how he perceives his later role in the greater society.

Q. Does this affect his educational motivation?

A. Very much.

Q. Would it affect, from your experience and studies, Doctor, does it affect his choices, educational choices?

A. Very much. If I might speak from personal experience since I did attend the public schools here in the City of Detroit, I attended Sherrard Intermediate and Northern High School. It was very much a part of the conversation of the youth that I attended the public schools with and I attended an all black elementary school and I attended an all black junior high school and at the time I attended Northern High School from '49 to '52, in '49, Northern was, I would guess about 90 to 93 per cent black. By the time I graduated it was 98 per cent black. The general conversation centered around the point of [867] view that, "Why should I struggle to graduate from this high school? Why should I struggle to complete my education when in fact there might be and probably will be little relationship between the education that is being afforded me here and opportunities after graduation?"

So there is a very direct relationship in terms of the perception of youngsters who are involved in a segregated school system. It was also my experience as an undergraduate student at San Francisco State College where I was very active in student government as an undergraduate, it was my experience that black youths who attended mixed schools, multi-racial schools, schools in which there was a population mix between black and whites, these particular youngsters tended to have a greater range of career opportunities in mind than black youngsters who attended basically segregated high schools.

Black youngsters who attended, in terms of my own personal experiences, who attended multi-racial elementary and high schools seemed to have had at that time higher levels of motivation as it relates to academic achievement. They were also willing to take much greater risks in terms of seeking out those careers in which blacks had historically been excluded from.

Black youngsters who attended segregated [868] high schools tended to be much more cautious in their career selection, their career choices.

Q. What do you understand by the term "community perception of a school" in this particular instance?

A. In general it is the kind of attitudes that community residents hold toward that school in terms of whether the school it-

self, what it can do for their youngsters, what kind of opportunities can an educational component within the community open up for the youngsters who are involved in that educational program.

When parents perceive that a particular school in their district or community is not necessarily a very sound one, is not one that facilitates academic achievement, then that particular perception or attitude towards the school on the part of the general community can readily relate to the amount of support that the parents will make available to that school.

I should add to that when parents are of the opinion that their youngsters are in a sound supportive educational system they are more likely to reinforce the attitude at home that education, in this instance, is particularly good for the child.

Q. Do schools acquire a community perception, good schools or bad schools, as a function of the race of the pupils attending schools?

[869] MR. BUSHNELL: If the Court please, this is leading. I respectfully suggest Mr. Green doesn't need any help from anybody, let alone Mr. Lucas.

MR. LUCAS: I think it is more in the nature of a hypothetical question.

MR. BUSHNELL: If it is put –

MR. LUCAS: I haven't related it to a particular school system. I asked him about the subject.

MR. BUSHNELL: If you phrase it as a hypothetical question I would see then whether I object, but this is grossly leading.

THE COURT: It sounded leading to me, Mr. Lucas.

MR. LUCAS: I think I can rephrase it, your Honor.

Q. (By Mr. Lucas) Dr. Green, in terms of the community perception which you discussed, is the community perception related in any way to the racial proportion in schools?

A. Yes. In general, North and South, and I say North and South because I have worked both in southern communities as well as in northern urban communities, there is a very strong feeling on the part of black parents that whenever a school is perceived as a black school that the resources that are made available to that school, that teaching personnel that are often placed [870] in that school are substantially different and inferior to what is found in essentially all white schools. This is a general perception on the part of the black community.

The black community even expects that the treatment that will be afforded youngsters in a school that is identified as a black school will be substantially different from the treatment that is afforded to whites in white schools.

Q. The white parents, is their perception a factor there?

A. Very much so.

Q. Would you explain that, please?

A. I think the perception of the white community is a function of how practices have been structured in the past, educationally. [871] You can readily perceive, and perhaps justifiably so, that schools that are essentially white will have available to it greater resources, more adequate, more abundant resources than schools that are identifiable as black schools.

Q. Dr. Green, have you examined the data on achievements in the City of Detroit?

A. Yes, I have.

Q. Were you in the courtroom when Mr. Schweitzer testified?

A. Yes.

Q. He is part of your Center?

A. Yes.

Q. Have you examined the exhibits which were prepared from that data?

A. Yes.

Q. Doctor, from your expertise in terms of achievement from the national basis and from examining the data here in the City of Detroit, can you describe the relationship between the racial composition of the schools and the achievement as the children enter into the school pattern and as they develop throughout the attendance in the system?

MR. BUSHNELL: Objection. There is no foundation laid for this question. What relationship?

THE COURT: I am not sure I understand the question. Would you state it again, Mr. Lucas.

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[877] Q. What do achievement tests measure?

A. Achievement tests in general tend to measure educational inputs.

Q. What do you mean by educational inputs?

A. We assume that a youngster has had the opportunity to have been exposed to a body of data over a given period of time. Then a certain test is administered to a child to assess whether or not the youngster has in fact successfully been able to cope with or comprehend or understand the data made available to him.

Educational achievement tests tend to be a much more direct measure of educational input than aptitude tests.

THE COURT: May I backtrack here a minute, with your leave, Mr. Lucas?

MR. LUCAS: Certainly, sir.

THE COURT: Am I to understand that you are satisfied, based on your own experience and studies and that of other experts in the field, that, generally speaking, there is no achievement difference, scholastically speaking, between white and black children at the entry level?

A. That in general there is a body of data that supports the point of view that the discrepancy between black and white students at the entry level tends to be minimal, very small. [878] There are some differences as a function of geographic region. I

can very safely predict that the entry level differences between black and white youngsters in the City of Detroit are much smaller than the entry levels between the black and white youngsters in Wilcox County, Alabama.

I could also safely predict that the entry level between black and white youngsters in the Flint, Michigan and Pontiac, Michigan and Benton Harbor, Michigan areas are probably minimal at the point of entry into the public school system.

This is not to say that they are exactly similar. This is not the case at all, but in general, generally speaking, the differences at the point of entry into the public school system tend to be minimal and in many instances they tend to not be statistically significant, if I might be that precise.

THE COURT: Is this supported by studies made of pre-but-almost-school-age children?

A. Again –

THE COURT: I am thinking in terms of the four or four and a half or the five-year-old who has not yet entered the school system.

A. In general, the differences are much, much smaller and in some cases minimal than one would find at year second, the [879] second grade level. Again there are other complicating factors. If we take black youngsters three and a half years of age who have been afforded a very impoverished upbringing for the first three and a half years of life and compare their educational achievement with white affluent three and a half year olds, the differences, of course, would be much larger. But if we take comparable groups in a sense that we could control socioeconomic status, take comparable groups of black and white youngsters, we would find that even at year three the differences are very small, very minimal.

[880] THE COURT: Well, this is an intriguing subject. First of all, I have no doubt that education is much more than the academic or formal education in school, and I would be surprised to find that that youngster, for example, out of a household where the parents are college graduates as against a household where the child emerges where the parents are, let's say, at the 6th grade

maximum level of education – I would find it surprising to have you support the position that at the pre-entry level those children start out at the same place.

A. Sir, I said that socioeconomic status does play a role here, and if we take a youngster from a very essentially poor background, let's say poor educational background, who is three and a half years of age, and we'll compare that youngster with another three and a half year old from an affluent background, the differences are larger. But, if we control that factor, if we take black and white youngsters from essentially the same background, the differences would be very minimal. Again, if we place a black youngster in a segregated school system and a white youngster in a segregated school system, then the differences would be reinforced and would begin to emerge and become very dramatic.

THE COURT: Would become enlarged then?

A. Very much so. So, your point is a good one. If we take [881] different groups of youngsters and compare them, the differences would be larger at year three and a half than they would be if we took similar groups of youngsters using race as a factor for comparison purposes.

THE COURT: Pardon the interruption.

Q. (By Mr. Lucas) What is the Metropolitan Readiness Test?

A. The Metropolitan Readiness Test would be looked upon as a general achievement test. That is administered through the kindergarten experience in some school districts throughout the country, sometimes administered through first grade. It is an educational readiness or achievement test, really.

Q. Dr. Green, what other information have you been given with respect to the Detroit School System?

A. I have had an opportunity to read the Detroit High School Study Commission report, the Equal Educational Opportunity report, I believe, which was published in 1962. I have been provided with achievement test data to read and look at. I have had an opportunity to look at graphs, charts, the city map, and I have been given some demographic data and information about particular

high schools and elementary schools in terms of racial composition.

Q. Dr. Green, first of all from your experience I think you said

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[916] . . .

Lansing community that one-way bussing denotes the inferiority that the white feels toward schools that are all black.

(Off the record discussion.)

MR. BUSHNELL: Mr. Lucas has suggested an exhibit which comes from the National Safety Council that shows, in effect, that it is safer for kids to travel by bus than to drive with their mother or to walk to school as far as accident rates are concerned, and I will stipulate to that.

THE COURT: Any exception to that stipulation?

MR. RITCHIE: We have taken this position in many lawsuits before.

THE COURT: What is that?

MR. RITCHIE: That it is safer to go by bus than to be driven or to walk.

THE COURT: Well, my mother is no longer alive, but she might resent that. The stipulation may stand.

Q. (By Mr. Lucas) Dr. Green, would you step down to the map, please. Plaintiffs' Exhibit 2, Dr. Green, which is the underlined map here? It has in it the data from the 1970 census. Affixed to it is an overlay of the elementary and senior high school attendance areas, two separate overlays. Would you examine the western section of the city around Greenfield Avenue? From you own knowledge of the city and your own

[920] Q. Are they school age?

A. Yes, one will be enetering high school in the fall and I have one that is 11 at the junior high level, and a youngster, seven, who is an elementary school child.

Q. Do they attend public schools?

A. Yes.

Q. As a psychologist, Doctor, is there a difference in the perception in your opinion of a black child in a school that is 98 or 100 percent black in Detroit, Michigan, as opposed to a similar perception of a child in a southern city, for example, Memphis?

A. Probably no difference at all.

Q. What is that perception?

A. Very early, as I indicated in the earlier testimony, a black youngster perceives that his stutus in an all-black school is an inferior one, and this is systematically reinforced by the greater society, not only by the greater society, but it is reinforced by his experiences with youngsters who attend schools that are predominantly white and they come in contact with each other during extracurricular activities such as football games, basketball games, after-school activities, but the perception is not only reinforced by other youngsters but also reinforced by teachers as well.

[921] . . .

One need only experience numerous visits within predominantly black schools in urban communities and you will find that very often conversations among teachers will reflect that they deem their status in a predominantly black school as much lower than that of the status of a teacher in a mixed school.

Q. Are these teachers, Doctor, affected in any way by the faculty assignment pattern? Let me ask you this as a hypothetical question: Assuming that there was a pattern of assignment of substantially higher proportions of black teachers to schools where there were 80 to 90 per cent black children as opposed to a similar low assignment of numbers of black teachers where there were 80 to 90 per cent white students, would this perception of children, the community, the teachers themselves be affected by this particular factor?

A. Very much in the same manner, yes.

MR. LUCAS: Dr. Green, would you answer these gentlemen's questions, please.

CROSS EXAMINATION

BY MR. BUSHNELL:

Q. I will move back a little, Doctor, so you will have a tendency to shout at me and everybody can hear you – which is educational psychology.

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[939] A. Yes. Another example here in Michigan would be Oak Park. Dr. Joe Hudson who was formerly associated with the school district in Oak Park here until I believe last year, pointed out that black younsters who were brought into the Oak Park school districts who were from very poor homes whose care level did not approximate the care level of white youngsters [940] in Oak Park – and Oak Park is not that disadvantaged a white community – when these youngsters were put in that multiracial setting, they thrived well and actively. As a matter of fact, we are now at Michigan State University beginning to look toward these black youngsters as good possibilities for enrollment at the university level. So, again that to me is the most immediate example of youngsters [who] care levels do not at all approximate the care level of white community youngsters, and they are doing well academically, and they will be able to compete effectively in higher education or in the employment market once they leave the Oak Park system. That is an immediate example in this area.

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[950] . . .

Q. So then – excuse me.

A. My point is that public education in America has never been democratic. I would like to refer to a conversation that I have had several times with Dr. Stu Rankin, who is a member of the Detroit Public School System who on several occasions has di-

cussed in quite great detail with me the unfairness and the racism that is very much a part of the American public education and I think Dr. Rankin would support that point of view. He is sitting in the courtroom here today.

Q. Now historically –

A. (Interposing) Historically this is true, sir.

Q. As I understand your answer and your position, Doctor, it's that public education failed in the first instance because it failed to adequately or appropriately educate the children it then had for its leadership role?

A. That is correct.

Q. By the same token, as I understand your position, sir, public education is failing today because it is still inadequately equipping children for their ultimate life roles, whatever it may be, either a position of leadership or just general employment experience?

A. Yes. And a very significant part of that has been the nonwillingness on the part of public school administrators to [951] bring about the kind of democratic climate in schools which would allow people to get to know and understand each other and a very significant aspect of that is dual school systems. Youngsters who do not get to know each other, who live apart from each other in a public educational setting cannot help leave that public school setting not knowing each other.

As I said, I went to Detroit Public Schools for 12 years and I never knew any white youngster. I attended class with very few, maybe one, two or three. Therefore, when I became an undergraduate student for a brief period of time at Wayne State and a longer period of time at San Francisco State College, I was lacking in a kind of past informal relationship that should have occurred in the classroom that would have allowed me to develop the kind of healthy attitude about whites that I should have.

The only thing I knew about white youngsters is what I heard at home. The only thing I knew about white people is what my

father told me about whites in terms of his experience in Georgia. My father saw whites lynch black people. My father left the South at 17 because he saw a youngster split down the middle and burned at Haddox County, Georgia.

These are the only things we heard about whites. He said whites should be avoided and he said, "Don't [952] argue with white people. When you go down to pay bills and if a white policeman says anything to you, you don't speak back to him. Come back home as quickly as you can." So the sort of thing I heard about white people as a youngster growing up in a black community and a black church, attending all black schools through black high school was white people are people you try to avoid. White people are individuals that you don't anger. You learn the white man's game so you can manipulate white people. This is what I was taught as a youngster and I never had the kind of experiences at the public school level which would counteract many of those views and feelings and attitudes that I developed as a function of training.

I have since found as a function of my relationship with whites in the adult world there tends to be a range of view among white people. There are white people who don't like black people. There are white people who sit on the fence, and there are white people who are very supportive of the concerns of blacks, but I would never have gotten that from my experiences at Sherrard Intermediate School and Northern High School in Detroit.

That is my concern about the kind of dual system and your question regarding the role of education in this sense the Detroit Public School System failed me as a [952-A] youngster. It did not provide me with those kind of experiences. I didn't know white people.

[953] Q. So, as I understand your answer you came to the Detroit Public School System with a set with respect to the relationships that you as a black child should have with this white community, this amorphous white community?

A. Yes.

Q. And you are saying, sir, that there was a great opportunity for the educational system to influence the set that you brought

with you to this system in a positive, integrated, heterogenous cultural way, is that correct?

A. That's correct.

Q. You would then agree with me, I gather, that there are external forces that work on each one of us regardless of our age in the total community, and that the school has an opportunity to reinforce or to modify or to change these, the effects of these external forces?

A. I would like to say that the school does reinforce those attitudes or modify them.

Q. I gave you three alternatives, Doctor. It has an opportunity to modify; it has an opportunity to change, and it has an opportunity to reinforce.

A. Okay.

Q. It has got a spectrum of chances with this kid, doesn't it?

A. Yes.

Q. Now, given such phenomena as segregated housing patterns that [954] have developed either by the effect of law historically or the effect of community practices, no matter how they developed, given the segregated housing pattern I'm certain you would agree with me, because you have testified to this yesterday, I believe, that the school has an opportunity again to change, to modify or to reinforce the effects of segregated housing patterns upon the individual child who comes to it, is that right?

A. Yes.

Q. The school then in taking this child and developing a school program which may or not be an educational program – let me interrupt myself there. I distinguish in this question between an educational program as a straight academic program and a school program as activities or experiences other than purely and conventionally academic. So, the school has an opportunity – go ahead. You wanted to say something?

A. I don't accept that distinction, though, and I [wouldlike] to make that –

Q. Tell me, because I want to hear it.

A. I can't conceive of any school program from a free lunch program to a bussing program that in some way can be related to what you have defined. I really don't know what you mean by a purely academic program. If you are referring to instruction in math, instruction in reading –

[955] Q. Yes.

A. Well, the attitudes about the school, the attitudes about that lunch program are all very significantly, as you pointed out yesterday, sir, all significantly related to the so-called straight line academic program. So, I never make those distinctions. I see it as a part of the overall educational process.

Q. Then as an educational psychologist it is your opinion that a public school educational experience is a totality of the experiences that you have in that public school system?

A. Yes.

Q. All right. Given the fact that there are existing external forces, such as racially segregated housing patterns, that have developed, would a system that attempts to modify or change the effects of, say, a racially segregated housing pattern in the totality of its program, its delivery of services to the child, would that system, in your opinion – strike that. How would that system in your opinion compare to other systems that you have referred to generally in your testimony?

A. Well, if a system, for example, if I may use your example of segregated housing patterns in a community, if such segregated housing patterns in a community does in fact lead to uniracial schools, if that system were put into effect, such concepts as [956] bussing, the changing of boundary lines to bring about multiracial schools, then I would say that system is taking a very positive step to build a kind of democratic classroom and school setting that I feel as an educator to be appropriate.

Q. What about other efforts other than bussing, for instance now not to limit it to bussing, but in addition to bussing? What about such efforts as deliberately structuring interracial exper-

iences and exchanges and associations between groups of white kids and black kids? Would this be a positive effort?

A. It could be. For example, the shared learning experiences of the intermediate, Wayne County Intermediate School Board in this area, many of the shared learning experiences have been looked upon as being not that functional, being somewhat disfunctional, because the students are well aware of the fact that they are temporarily contrived experiences to bring white and black students together. This is not as lasting and meaningful and ongoing as the kind of process whereby we have youngsters in classrooms together in an ongoing non-restrictive manner. So, I would not want to deny youngsters an opportunity for shared learning experiences, which is a term that is frequently used. I think this can be helpful and significant. But, I don't see this as being a substitute for the more meaningful practice of changing boundary lines, bussing, and the structuring of the kind of situations where youngsters can be [957] together on an ongoing sustained basis within a normal learning setting.

Q. Would it be meaningful, Doctor, if there was an attempt made to rectify certain physical deficiencies that a child has, let's say, a poverty child who needs glasses? If the school provides glasses, does this help in the education?

A. Yes, it does.

Q. By the same token, is it helpful if the school again provides a poverty child with shoes or outer clothing to wear to get to the school?

A. Yes.

Q. And is it helpful if given a white segregated situation the white child is deliberately exposed to teaching aids such as books, teachers, administrators, equipment that uses illustrations if these symbols in quotes are black and related to black people rather than the conventional cherubic white child?

A. Again it might help, and the reason for this is that for example the follett series that was used – I don't know if they are yet using them in the Detroit School System –

Q. Would it surprise you, Doctor, that the system was developed in the Detroit School System?

A. No, it would not. As a matter of fact, I am aware of the chairman. But, on the other hand, these kinds of experiences can be wiped out by newscasts of a black robbing an elderly [958] white person in downtown Detroit. These kinds of experiences can be readily wiped out completely. Well, I won't even mention Detroit in the summer of 1968. It can be wiped out by the fear of suburban parents who come into Detroit for a movie on Friday evening. However, ongoing sustained interpersonal relationships are not wiped out by a mugging of an elderly white woman by a black man.

Q. Is it correct to say then, sir, that in your professional opinion the ultimate end is to achieve a thoroughly integrated and heterogenous society?

A. I would say my goal is to maximize equal opportunity in American life, and a very significant part of that thrust is the elimination of dual educational learning experiences for children within our public educational system here in the United States. So, my overall goal is to maximize equal opportunity which, at the same time, will reduce discrimination, reduce poverty and integral conflict. I see the elimination of those school systems as being a very significant part of the function of the role that the school plays in it.

Q. When you talk about equal opportunity, sir, you talk about the total spread of equal opportunity of which equal educational opportunity is a significant part?

A. Yes.

Q. And I hear you saying that this striving for equal opportunity [959] is not infrequently subverted by the effect of – how should I phrase this – not external forces, but the effect of community forces at work that deny the validity of an equal opportunity society, your example being the newscast of racially identifiable mugging. I would also assume that this would hook into your testimony of yesterday about teacher attitudes and what have you, is this correct?

A. Community and school forces.

Q. Community and school forces?

A. Right.

Q. Would you buy community or school forces?

A. Well, I would feel more comfortable with community and school forces, and I see them as being interrelated. I can never get away from the fact that probably every adult in this room attended, most likely, a uniracial school, including yourself, sir. I'm not attempting to be personal at all, but I would guess that every adult in this room or most adults in this room did not have experiences with blacks on an ongoing basis through their school years. There may be some exceptions here. However, this can't help but color the perception that whites have of black Americans, and I say this, I think, in a very fair sense and not in a racially bias sense. It is my feeling that most adult white Americans deep down inside unconsciously perceive black Americans as being inferior almost [960] at every level, at the professional as well as the non-professional level. Even whites who would never deliberately mistreat blacks –

Q. You say that, sir, and you say that as a black man. This is your conception of the prevailing white attitude, whether it is consciously recognized in the white individual or not. You see this as the prevailing white attitude.

A. I would like to finish my statement by saying that this is not also acted out in terms of unfair behavior. There are whites who have this attitude maybe even unconsciously felt who strive to overcome this by being very fair in their relationships with the blacks. But, I strongly feel – and there is data to support this. Nevitt and Sanford have done research in which they were able to systematically document in large numbers of undergraduate white students this kind of tacit attitude about people of color and specifically black Americans; that somewhere along the line they are inferior. This is true at the university level, at the PhD. level, even regarding blacks who have attained good training at schools. This is true even at schools such as Harvard, Yale, Fordham and so forth. I would like to add that early experiences in the school setting to a great extent could offset this prevailing American attitude. I see it as a white American attitude. I think, though, that

the school itself could play a very meaningful and very [960-A] significant role in offsetting this attitude.

It is further complicated by black youngsters who attend all black schools, again coming back to my earlier point, who see very little of whites, have very little contact with whites except in authority positions.

This is why we have the conflicts at high schools that attempt to integrate, the Osborns integrate youngsters at the tenth and eleventh grade level. This is not to say it shouldn't happen, but the conflicts we find at the high schools recently integrated in your large urban areas is highly related to the fact youngsters do not have multi-racial experiences beginning in the early grades.

So again it comes back to the role, I see much of the conflict in our communities as being related to the failure of schools to properly educate people to be decent people and that extends far and beyond the concept of learning how to read and write and add and subtract. I see that as being very significant and very important.

I think if we are going to ever talk about minimizing, for example, in my conversation prior to my coming on the witness stand yesterday, in brief conversation with Dr. Stu Rankin, he was telling me that their efforts to bring blacks and whites together in the Detroit School System just to talk is darn near difficult.

Mr. Al Hurwitz on our staff at the Center [962] of Urban Affairs and now working with the Detroit School District, in my conversations with Mr. Arthur Johnson, he informed me recently and I am sure he will support this, that he is exasperated by the racial tension in the Detroit School System.

I see the racial tension today in the City of Detroit, I see 1968, maybe you would deny this, but I strongly feel that the acts of 1968 –

Q. '67?

A. '67, the summer of '67 are a function of the failures of our schools. The youngsters that I attended Dwyer Elementary School with, Sherrard Intermediate School with, and Northern

High School, who are now in Jackson Prison. I read in the *Detroit Free Press* a short time ago a young man I attended Sherrard Intermediate School with and Northern High School with was recently sentenced to 90 years in Jackson Prison for armed robbery, second or third count of armed robbery.

I see most of that activity as being a failure of the Detroit Public School System. We can't place that burden on the community because there are blacks who have been able to receive support in the schools at some particular level.

Q. As quite obvious you yourself did.

A. Again I don't want to single out a black or two or three [963] because there are too many. As I said, youngsters I played basketball with at Highland Park Community Center, which was two blocks from the Detroit city line, are now in Jackson Prison today, many of the young men I attended Sherrard Elementary School with are in Jackson today. I feel maybe I am a lucky No. 1. You know, you roll a [die] 10 million times you are bound to come up with seven twice. And so one or two escape, but I am very concerned about the many young men who were as capable as myself, some who were more capable academically than I was, who have ended up on the streets today in Detroit unemployed, many of whom have ended up in jail serving long terms and, sir, if you think my statements in this regard cannot be documented, I would be very happy and I would like this to be part of the record, to provide you with actual cases and facts of young men that I grew up with, that I know by name, who are now in Jackson Prison today.

I cite this as a failure of the Detroit Public School System to a great extent and not necessarily the community. Because the school can play a significant role. If you refer to Drake's book, *The History of American Education*, Drake points out very clearly when the waves of immigrants came to this country during that period from 1914 through 1927 and '28, the school itself was very responsive.

You look at the Philadelphia School System [964] from the period 1918 to 1923, in reading Drake's book you will find very special programs were designed for, after school, for adults and for children to offset the disadvantages that they brought to America.

You will also note that in the Boston School District, Drake cited this too, for a period of time they set a very systematic, carefully-tailored school program to offset the crime rate among the Irish in the Boston area.

The Detroit Public School System has never designed programs, per se, that are directly related to offsetting the crime or effects of crime in the greater Detroit area.

Let me come back and retrack part of that last statement. Let me say I do not know directly of programs that were structured in that period 1911 to '23 in the Boston area. I do not know prototypes here that were directly designed. Maybe programs have been designed with that regard, but my major point, again, being an educator, having spent 12 years in the public schools, four years as an undergraduate, two years on a master's, three years on a Ph.D. program, I am aware of the resources of public education and too much money today is spent by our public schools to allow the number of failures to occur and at the rate that they are occurring.

Our schools are producing failures. If General Motors would ever begin to produce the kinds of failures that we produce in our public schools they would be out of [965] business tomorrow. That is my concern and I hope I don't sound overly passionate here at the moment, but I feel very strongly about the role that education can play in humanizing young people, in humanizing this nation, and a very significant part of this humanization process is learning to live with and to respect each other. And when people are separate from each other, as long as we have the Birminghams, the Bloomfield Hills, the Livonias, and I live in East Lansing, so I have to drive down every morning to testify and when I drive in from East Lansing, like this morning, it took us one hour to drive from East Lansing to about Southfield, and it took us almost an hour to get – that is about 60 miles – it took us another hour to get from Southfield downtown, and I very carefully looked and I asked my two assistants to look too. We counted three black faces between Southfield – and I mean the traffic was bumper-to-bumper at spots. From Southfield all the way down to Eight Mile we counted about three black faces. And I see the schools as being directly related to that.

We did not educate the white adults who went to the Detroit Public School System who are now living in Livonia. We did not educate young whites who were educated at Central. I can remember when Central was predominantly white. I can remember when Southwestern was predominantly white. I can remember when Eastern High School was at about a 60 [966] percent white population. When my older brother attended Northern High School, he is a teacher in the Detroit system. When he graduated in about 1935 or '36, about those years, Northern High School had 3 percent white. All the whites have fled. Northwest Detroit has fled to Oak Park, Livonia, Bloomfield Hills. I see that flight being significantly related to what we have not done in our public schools. If we did a head count we would find a good number of those residents today, and another good example, the fact blacks can't buy houses in Warren is a failure of the Detroit Public School System. Livonia was sticks and woods when I was a kid. That suburban community was built because the Detroit Public School System did not perform its functions. It was built because we had all white elementary schools, all white junior high schools and all white high schools.

I hope, sir, you as an attorney for the School Board would begin to see this as I see it and understand my concern as a witness to leave my job and to leave the University and I am not receiving – your comment about the stipend that Schweitzer – you didn't give Schweitzer, to testify –

Q. That was just smart lawyer talk.

A. But I am taking time off from my job to be here because I am vitally concerned about Detroit. My parents live here. I [967] have a brother in this town who is an orthopedic surgeon. I have a brother in town who is a schoolteacher. I have a sister who is a schoolteacher. I have relatives in this community. I am concerned about Detroit and I love Detroit. I don't want to sound emotional, but I do want to see the schools humanized and become democratic institutions and they are not democratic institutions today.

Q. May I ask you, Doctor, what your father did?

A. My father was a minister. He is a retired minister. He is 76 years of age and still living in Northwest Detroit. The neighbor-

hood they moved in when they moved into the neighborhood was 98 percent white three years ago and it is probably 90 percent black today. It is a community in which the homes are well kept, but whites ran. Whites fled. My father lives two blocks from Superintendent Norman Drachler. I believe he lives on Appoline and my parents live on Steel Street, a block or two away. That neighborhood has changed dramatically.

I see that change – the homes are well kept, it's a decent neighborhood, but the whites have fled and they fled because of fear. They have also fled because of our failure to educate black and white youngsters today.

On the other hand, black kids who give up on the system – see, our parents taught us to be non-violent. [968] Our parents taught us to avoid whites. Our parents taught us to avoid conflict, especially with whites. But many young parents today, as a function of this strain and distance in our society are not teaching their youngsters to turn the other cheek when you are mistreated.

I still feel the school can play a small role. It is not too late to offset those kind of negative feelings because I am aware of the different views now brought to the University by black students who are high school graduates and probably the brighter students or better-prepared students, and their attitudes are far discrepant from the attitude I held as a graduate 15 or 20 years ago.

Q. Does that not suggest to you that perhaps public education in the Detroit School System in particular is doing a much better job today than it did when you were a student?

A. I would say this. On the basis of the information, the data that I have seen here in court, the basis of what I can see right in Detroit, I have 30 nieces and nephews who are in the public school system in Detroit or recent graduates of Detroit Public School System and many are in elementary schools. Not one of my nieces or nephews are attending at the elementary school level an integrated school. And they live in Northwest Detroit.

Q. That doesn't answer my question, but let that be as it may. [969] Let's go back to several things you raised. Do I understand this answer of yours, Doctor, to be that the decalogue of

discrimination and horror that you have testified to is the responsibility of the Detroit Public School System in this metropolitan area?

A. I would say a major share of the responsibility must be placed at the foot of the Detroit Public School System. I can never move away from the fact that in downtown Detroit today in the so-called financial district, you will find that these men were educated in the Detroit Public School System. Private clubs are closed in Detroit today to blacks. These people were educated in the Detroit Public School System. My only position is that the public educational system can go a long way in offsetting these kinds of negative attitudes and the way our schools have been structured, it hasn't happened.

Q. I am certain you applaud every effort made to offset such negative attitudes?

A. I would, yes.

Q. Let's talk about these negative attitudes, sir. You testified that your concept as a black man of white attitudes is that every white, whether he knows it or not, or recognizes it or not, is fundamentally prejudiced against blacks. Did you say that or did you?

A. No, I didn't say that. The only way I can determine prejudice [970] is in terms of how people act and behave. I made it very clear there are many whites who would never engage in practices or behaviors that would harm blacks.

Q. But deep down beneath –

A. (Continuing) If I said every white I would like to make a correction. The majority of whites in America and throughout the world, but we are concerned about the United States – we are concerned about the City of Detroit. All right. Let's say the majority of whites in the City of Detroit tend to hold at a conscious or unconscious level attitudes of inferiority about people of color. This comes up in my classes that I teach at the University.

Q. O.K.

A. O.K.

Q. We have that in perspective, I believe. Now, sir, you are a black man. What is the black attitude, the majority black attitude with respect to whites?

A. I would say the majority black attitude toward whites, and of course, these attitudes –

Q. (Interposing) In your opinion.

A. Yes, there is a range of attitudes and views in the black community.

Q. Among blacks –

A. Towards whites. I believe I made that statement about the [971] white community. There tends to be a range of attitudes and views. But I think in general blacks tend, the attitude towards whites on the part of blacks is related to an expectancy of unfair treatment. There is a general, you know, attitude of – there is a general expectation on the part of the black community to expect the worst from the white community.

Q. Doctor, you very carefully emphasized that among blacks there is a range of attitudes with respect to whites. I did not hear that distinction when you spoke about white attitudes with respect to blacks. You talk about the majority white attitude. Now, do you recognize such a distinction among blacks?

A. I made a comment about the majority of attitudes in the white community and a majority attitude in the black community. If I can recall what I said about the white community, I said as I grew up, after I left high school, I found that there were a range, I discovered myself that there was a range of attitudes and views among whites. I believe I made that very clear.

Q. The majority attitude, in your opinion, was what?

A. That there is a general pervasive attitude.

Q. All right. This attitude among blacks with respect to whites is one of distrust, was that the word you used?

A. I said there was an expectancy on the part, an attitude, well, let's say, most blacks expect to receive unfair treatment from [972] whites in general across the board. These attitudes, of

course, range in blacks who are in a better position to protect themselves. Their expectancy level is not as high as blacks who are defenseless.

My expectation and mistreatment from whites is not the same as the level of expectancy of the man who is standing on the corner waiting for a bus because I drive, one, and, No. 2, when the white policeman comes to my car and calls me "Boy," which does happen, and he discovers I am at the University, that I am on a university faculty, then the tone of the conversation changes. When he discovers I might know, if I am on the highway, I might know the head of the State Highway Patrol, his attitude changes. But that is one person. Again I expect the worst, and I think most blacks do.

Q. You testified, yesterday, sir, I believe, that blacks generally expect they are going to have the worst schools with the worst equipment. I paraphrase. Is that right?

A. This is, again I would think, an attitude. In all black schools there is a general feeling that the resources in those schools may not be commensurate with resources in white schools. I have not seen cost figures regarding resources or expenditures per school in Detroit, but I do know nationally this is the case.

[973] Q. But, I do understand you to say that you haven't seen that in Detroit.

A. I have not seen that per pupil expenditure by schools.

Q. I'm sorry.

A. I have not seen that kind of data here in Detroit.

Q. I'm talking, sir, about the perception I believe is the phrase you used.

A. Yes.

Q. The perception that blacks have of the type of school service that they get. Here it is, I think. Let me just read from the transcript of yesterday to refresh your recollection. Mr. Lucas asked the question, "What do you understand by the term 'community perception of a school" in this particular instance?" And

your answer was, "In general it is the kind of attitudes that community residents hold toward that school in terms of whether the school itself, what it can do for their youngsters, what kind of opportunities can an educational component within the community open up for the youngsters who are involved in that educational program." And then you went on to say, you talk about when parents perceive that that particular school in their district or community is not necessarily – "I should add to that when parents are of the opinion that their youngsters are in a sound supportive educational system they are more likely to reinforce the attitude at home – " and so on. Do [974] you recall that?

A. Yes.

Q. It is in that context that I ask this question: Is it your testimony that black parents, black parent community perception of schools is that they are not getting full school service?

A. Yes.

Q. As a psychologist, is there any connection between the general perception of whites by blacks, to which you have testified, and their perception that they are not getting good school service?

A. Would you repeat that, please?

Q. I beg your pardon.

A. Would you elaborate on that question, please?

Q. Let me try it another way. You testified yesterday about a self-fulfilling prophecy.

A. Yes.

Q. And I ask you, sir, as a psychologist, a professional, is there any possibility or – strike that. Is there any relationship between the black man's general perception of the white and what the white is doing to him and the black man's general perception of the educational service that he is probably getting?

A. I would say there probably is a relationship, yes.

[975] Q. Now, let's zero in on Detroit. As Exhibit 2 indicates to which you made reference yesterday, there are significant

sections of the City of Detroit where the general population is predominantly black. In those areas as shown on Exhibit 2 –

MR. LUCAS: Would you indicate which Exhibit is Exhibit 2?

MR. BUSHNELL: I'm sorry.

Q. (By Mr. Bushnell) Do you understand? I'm referring to this large map to stage right and my left.

A. Yes.

Q. Would you indicate, sir, if you know, the schools within the areas that are predominantly black in general population that are currently delivering inferior educational service to the kids in those schools in terms of educational materials, teacher assignments, the quality of the building itself, class size, supportive educational services such as hot lunches and that type of thing –

MR. LUCAS: I don't believe there is any testimony on direct as to any particular schools or whether or not as of today any particular school had a component. The question which was read to him dealt with the perception generally rather than with specific school buildings.

MR. BUSHNELL: If the Court please, that is what this lawsuit is all about.

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[993] Q. Let's shift again to another subject, sir. It is a very short matter. You told us yesterday when you were attending Northern High School, that Detroit school was bussing black kids past white schools into Northern, right?

A. That is correct.

Q. Do you know where those kids came from?

A. They came from the Eight Mile District, I don't believe at the time that that section was a part of the City of Detroit.

Q. As a matter of fact, they came from Royal Oak Township which still isn't part of the City of Detroit?

[994] A. I believe they are part of the Oak Park District now.

Q. That's right. Did you know, Doctor, that this was in about 1952, I think you told us?

A. The bussing was during the period '49 to '52, I know for sure because I was in high school at the time.

Q. Did you know that when that bussing program came to the attention of the Detroit Board of Education and the new superintendent that it was immediately discontinued?

MR. LUCAS: Your Honor, I object.

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[996] Q. (By Mr. Bushnell) Do you know the practice was discontinued?

A. I believe I read in the testimony of Doctor Drachler that at some point it was discontinued.

Q. Do you know why it was discontinued?

A. I don't recall specifically why, no.

Q. Do you recall the why from Doctor Drachler's deposition?

A. I read several depositions and I have read a lot of material and I don't recall exactly why, as to why it was discontinued.

Q. A fair answer. But in any event, those kids in Royal Oak Township are now going into Oak Park, you do know that?

A. Yes.

Q. And, indeed, it is those children that you're looking at, you at MSU, all of you at MSU are looking at as potential students at MSU and those are the kids who are performing at higher levels now in this Oak Park experience or Royal Oak Township –

MR. LUCAS: He is characterizing the same kids are now performing well. I will object because it obviously can't be the same children that were in Detroit. This is a different set of children.

MR. BUSHNELL: Counsel has a keen grasp of [997] the obvious. Obviously I don't mean the kids in '52 and the ones in '72.

Q. (By Mr. Bushnell) The Royal Oak Township kids who are going into Oak Park are performing at a good academic level and I believe you testified yesterday in your opinion it is because of their exposure to their Oak Park experience, in part?

A. Yes.

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[1224] . . .

WILLIAM LAMSON

Q. (By Mr. Caldwell, continuing) Yes. How does the '60, '61 overlay differ from the '59, '60 overlay?

A. It has an optional area.

THE COURT: Mr. Lamson, address all of us, not just Mr. Caldwell.

A. It differs in that it has an additional optional area involving the Thomas School that begins in this year, '60, '61. That optional area is described in the boundary guide book for that year.

Q. (By Mr. Caldwell) Is that a high school option area or junior high?

A. It is a junior high optional area.

Q. Would you describe the rest of it?

A. As I was going to say, the hatch marks represent optional areas as they arrive, or in the years of 1959 as I found them inasmuch as 1959 was the first map and description offered. So, relative to all subsequent overlays if the hatching is in the color of the overlay, it represents an optional area that originated, to the best of my knowledge, from the information I have, an optional area that originated in that year. But, in 1959 it represents optional areas [1225] that existed as of 1959, the first year described by the Board of Education.

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[1225] . . .

A. Is it clear to this point what I have said?

THE COURT: Well, I won't guarantee that. But, as I understand it, let's take the first two maps. The first one was in yellow?

[1226] A. That's right.

THE COURT: And you had those hatch marks?

A. That's right.

THE COURT: All right. Now, am I to understand that when you put the next overlay on and the hatch marks appear in the yellow, do they carry over?

A. They do if they are totally bordered by the next color, your Honor. In this instance here between Northwestern High School and Western High School there is an area that is totally bordered as if it were a separate zone in the color of that overlay–

THE COURT: All right, proceed with your explanation.

A. That means the preceding hatch marks continue. If those hatch marks are of the color of the overlay, it would mean to the best of my knowledge that they originated in that year.

Q. (By Mr. Caldwell) With the exception of the Thomas Junior High option you noted there, there were none that originated after 1959, were there?

A. Not that I was able to discern from the information and from the books.

Q. The 1959 overlay also does not represent that those optional [1227] areas were created that year, does it?

A. No, it doesn't.

Q. Directing your attention to the optional area that you have designated between the Central High School district and the Mackenzie High School district, could you describe that optional area and tell us the schools involved?

A. You want the street boundaries?

Q. The elementary schools involved.

A. The two schools involved are Winterhalter and McKerrow.

Q. And what was the option they had?

A. They had the option of going to either Mackenzie or Central. I might add that that option existed to the west of a line traveling down Petoskey. It did not include the entire school zones of both schools.

Q. If we could place the 1950 census map – now, this was Plaintiffs' Exhibit 136-A, which is the 1950 census map, and on the overlay what does the census map represent the racial composition of the population to be in that optional area, the Winterhalter, McKerrow optional area?

A. Zero to 4.9 percent non-white.

Q. So, the area is colored white?

A. That's right.

Q. And also the Central High school area, what is the racial composition of the population in that area?

[1228] A. It is primarily white in color, meaning zero to 4.9 percent non-white. It has a patch of orange in it, which is 50 to 85 percent non-white.

Q. How large is that portion in comparison to the white portions?

A. A tenth.

Q. Now, in 1960 on the census map, 136-B, what is the racial composition of the population in the area described as the Winterhalter-McKerrow optional area?

A. There are three colors involved, primarily orange, which is here represented as 50 to 84.9 percent non-white. In the northwest corner section, green, represented as from 5 to 24.9 percent non-white, and in the southwest corner there is a patch of blue, which represents 25 to 49.9 percent non-white.

MR. CALDWELL: I think it might be quicker if we could round off the 49.9 to 50 for convenience' sake, if you have no objection.

Q. (By Mr. Caldwell) As a general matter, all of the maps, the census maps that you prepared, the 136 series and Plaintiffs'

Exhibit 2, the colors represented on each of those census maps represent the same proportion of none-white, is that right?

A. That's right. All the colored codings are identical.

Q. Would you just run through the code one time, please?

[1229] A. The color code is as follows: white indicates 0 to 4.9 percent non-white. Green indicates 5 to 24.9 percent non-white. Blue indicates 25-49.9 percent non-white. Orange indicates 50 to 84.9 percent non-white, and red indicates 85 to 100 percent non-white.

Q. Had you completed describing the racial composition of that optional area between Central and Mackenzie?

A. Yes, I had.

MR. CALDWELL: If I might state for the record, your Honor, in the 1960, '61 racial count from Plaintiffs' Exhibit 128-A of Central Senior High, it was 97.2 percent black, while Mackenzie Senior High was 12.2 percent black.

If I might also state, your Honor, from Plaintiffs' Exhibit 132, the first page, percentage of white and black students in each high school constellation represented in respective high school, this exhibit on the first page, 1960, '61 page, represents that of 6,547 blacks in Mackenzie High School constellation; only 341 or 5.2 percent were actually represented in Mackenzie High School, whereas some 25 percent of the whites in the constellation were represented in the high schools. In that year the system average was that 12.4 percent of the blacks in each constellation were presented in the high school. That is the [1230] average. 19.6 percent of the whites in each high school constellation were represented in the high school. Also at this time Winterhalter was 83.6 percent black, referring to Plaintiffs' Exhibit 128-A, and McKerrow, the other elementary school involved in that option, was 90.6 percent black.

Q. (By Mr. Caldwell) Directing your attention, Mr. Lamson, to the optional area which appears to be between the Central and Northern High School areas, could you describe that option and tell us what the option was?

A. That option involves the Cody School area. The people in that school area have the option, as you suggested, to go to either-

MR. CURTNER: Objection, your Honor. He doesn't know what the people in that area had or had not in 1960. He only knows what the boundary book says.

A. I can change my answer.

Q. (By Mr. Caldwell) Please do.

A. The boundary books indicated to me that the pupils in that area had the option to either go to Central or Northern High Schools.

Q. Can we place the '50 census map under this overlay? Now, in 1950 in the optional area that you just described, what was the racial composition of the population in that area as represented by the map?

[1231] A. The map represents that population to be practically 50-50 between white and green with a small portion of blue in it, white being 0 to 5 percent non-white, green being 5 to 25 percent non-white, and blue being 25 to 50 percent non-white.

Q. And referring now to the 1960 census map, what is the racial composition of the population in that optional area?

A. The area is now predominantly orange, which is 50-to 85 percent non-white, approximately a quarter blue, which is 25 to 50 percent non-white, and a small southwest corner of red, which is 85 to 100 percent non-white.

Q. I believe you previously described the Central High School area as being predominantly white in 1950, did you not?

A. Yes, I did.

Q. Now, directing your attention, Mr. Lamson, to the optional area between Northern and Northwestern, would you describe the schools involved in that option and tell us what the option was as represented by the boundary guide book of the Board of Education and your information from Mr. Henrickson?

A. It represents the areas involving Thirkell and Goldberg Schools, and those sources indicate that to be an option between Central and Northwestern High School and Northern High School.

Q. This is the Thirkell and Goldberg Elementary Schools?

A. That's right.

[1232] Q. With regard to all of these options which you have just described, the options represent the options of the elementary youngsters to go to the senior high school?

A. That's right.

Q. So that, for example, in Thirkell-Goldberg presumably they would both go to the same junior high school and then have an option for a high school?

A. Yes.

Q. They don't have a junior high option, at any rate, even if both schools don't go to the same junior high. Now, would you describe the racial composition of the Thirkell-Goldberg area as represented by the 1950 census map?

MR. CURTNER: May I ask the relevance of the 1950 census map to a 1950 school map?

MR. CALDWELL: The optional area is representative of the '59 overlay. This is the first year that the Board of Education centrally ascertained the exact boundary, school boundaries, and published any maps. At least it is the first time that they have any in existence. The optional areas have all been in existence for various periods of time –

MR. CURTNER: Mr. Caldwell doesn't know that information, nor does Mr. Lamson. All they know is what the 1959, '60 boundary guides say.

[1233] MR. CALDWELL: The information provided us by Mr. Henrickson, your Honor.

MR. CURTNER: Ask Mr. Henrickson.

MR. CALDWELL: I will, Mr. Curtner. But I think it has a great deal of relevance in showing the population trends, the existence of these optional areas. We are somewhat handicapped by not having the optional areas back as far as they went when they came into existence. That is because the Board of Education has never gathered or retained that information prior to 1959.

THE COURT: Proceed.

Q. (By Mr. Caldwell) I think I had asked you to describe the racial compositon of the 1950 census map in the Thirkell-Goldberg optional area.

A. Yes. That area involves three colors, white, green and blue, white being 0 to 5 percent non-white, green being 5 to 25 percent non-white, and blue being 25 to 50 percent non-white.

***

[1236] . . .

Q. (By Mr. Caldwell) Referring back to the Thirkell-Goldberg option which you previously described, I believe you described the racial composition of the Thirkell-Goldberg option as revealed on the 1950 census map. Would you describe the racial composition of the population in the Northern High School area and in the Northwestern High School area during that same year as revealed by the '50 census map?

[1237] A. The population reflected by the census map is in the Northern High School area. It's as follows: It's predominantly red and orange, red being 85 to 100 per cent non-white; orange being 50 to 85 per cent non-white. There are portions of white in it, white being zero to 5 per cent non-white and there are some, two portions of green, being 5 to 25 per cent non-white and there is one portion in the northwestern corner of blue, blue being 25 to 50 per cent non-white.

Q. Would you outline the Northern High School boundary for the benefit of the Court, please, with your pointer?

A. It begins here in the CBD, Central Business District, the eastern boundary then goes up Woodward, begins to cut over to the east in that manner. (indicating)

The percentage non-white in the Northwestern High School area is as follows: It seems to be approximately 50 per cent white, that being zero to 5 per cent non-white. There are portions of green, 5 to 25 per cent non-white. There is some orange, 50 to 85 per cent non-white. Red, 85 to 100 per cent non-white. There are two portions of blue, 25 to 50 per cent non-white.

Q. Directing your attention to an area between the Chadsey Senior High district and the Northwestern Senior High district, would you describe that optional area? It appears to be bounded by another optional area, and if you would make that distinction [1238] clear, please.

A. Yes. That area to which you refer involves a portion of the Newberry School district and it is that portion of the district east of 29th Street. It represents an option, it is represented by the boundary books as an option between Northwestern High School to the northeast and Chadsey High School to the southwest. If I may – it differs from this total area in that the large area represents an option between Northwestern High School and Western High School. It's not the same option. It's merely this portion right above my hand.

Q. Does the Newberry optional area cover the entire Newberry Elementary zone?

A. No, it does not. Only the eastern portion of it, the portion east of 29th Street, that is.

Q. What is the portion of that option of the Newberry Elementary zone which is east of 29th Street as reflected on the 1960 census map?

A. It is a red and orange area, orange being 50 to 85 per cent non-white, red being 85 to 100 per cent non-white.

Q. West of 29th Street, what is the racial composition as shown on the '60 census map?

A. West of 29th Street is green and white; white being zero to 5 per cent non-white and green being 5 to 25 per cent non-white.

Q. Referring you now to the 1950 census map, would you describe [1239] the racial composition of the Newberry optional area?

A. By the 1950 census map the composition is primarily green which is 5 to 25 per cent non-white with a small portion of orange which is 50 to 85 per cent non-white.

MR. CALDWELL: Your Honor, if I may state from Plaintiff's Exhibit 132, the first page referring to the '60-61 school year indicates that with regard to Northwestern High School there were 2034 white students attending school within the constellation, that is, the elementary and junior high and senior high schools of which only 29 or 1.4 per cent actually attended the Northwestern High School itself.

Also in that year in '60-61 year, referring now to Plaintiff's Exhibit 128-A, the Chadsey Senior High School was 41.3 per cent black whereas the Northwestern Senior High School was 99 per cent black. By 1960-61 the Newberry School was 87 per cent black.

Q. Referring you now, Mr. Lamson, to the optional area which appears between Western and Northwestern, could you describe that optional area and the schools involved?

A.This optional area includes five elementary school districts as described by the boundary guide book. It involved the Craft School, the Potter School, the Chaney School, the Kennedy School and the Owen School districts. The option offered, as reflected in the boundary guide books, was an option between [1240] Western High School and Northwestern High School for the children in those attendance areas.

Q. Referring you now to the 1950 census map would you describe the racial composition of the optional area which you just described between Northwestern and Western High Schools?

A. That area is primarily green, green being from 5 to 25 per cent non-white. To the north there is a small portion of orange, that being from 50 to 85 per cent non-white. To the northwest there is a portion of blue, that being 25 to 50 per cent non-white and to the east is a portion of white, that being zero to 5 per cent non-white.

Q. What is the racial composition as reflected for the Western High School area?

A. Can I check my notes?

Q. I don't mean the composition of the school, the racial composition as reflected on the '50 census map.

A. The high school area represented on the '50 census map is primarily green, that being 5 to 25 per cent non-white with two portions, one to the east and one to the west of white, that being zero to 5 per cent non-white.

[1241] Q. (By Mr. Caldwell) Was there any orange or red reflected in that area?

A. No, there was none.

Q. And the Northwestern High School area, what was the racial composition of it in 1950, of the population?

A. The Northwestern High School area looks to be 50 percent white with portions of green. I described white as being 0 to 5 percent non-white, green being 5 to 25 percent non-white, some orange, that being 50 to 85 percent non-white, and red, being 85 to 100 percent non-white. There is a small patch of blue, that being 25 to 50 percent non-white.

Q. Referring you now to the 1960 census map, would you describe the racial composition of the optional area that you have described with regard to population?

A. The optional area in 1960 as reflected by the census map is primarily orange, that being 50 to 85 percent non-white, some portions of blue, 25 to 50 percent non-white, and one portion of green in the Craft School area, that being 5 to 25 percent non-white.

MR. CALDWELL: Plaintiffs' Exhibit 128-A, your Honor, reflects that in the 1960, '61 school year Chaney was 87 percent black; Craft was 89 percent black; Kennedy was 73 percent black, and Owen was 43 percent black. Northwestern High School as previously mentioned was 99 per [1242] cent black, and Western Senior High School was 15.3 percent black and, as previously stated, Exhibit 132 reflects that 1.4 percent of the whites residing in the Northwestern High School area actually attended high school there.

Q. (By Mr. Caldwell) Now, directing your attention to an optional area between – it appears to be between the Mackenzie High School area and the Northwestern High School area on an east-west line, would you describe that option, please?

A. Yes.

Q. The option is actually between Mackenzie and Chadsey, I believe.

A. That's right, it is. It involves the northern portion of the Sherrill School district above Tireman, and it is an option involving Mackenzie High School and Chadsey High School according to the boundary guide books.

Q. Referring you now to the 1950 census map, would you describe the racial composition of the population in the optional

area you just described in the Sherrill School district north of Tireman?

A. It is white, that being 0 to 5 percent non-white.

Q. With regard to the remainder of the Sherrill School district which is south of Tireman, what was the racial composition of the population in that area?

[1243] A. It is divided between blue, which is 25 to 50 percent non-white, and white, which is 0 to 5 percent non-white.

Q. Now, would you describe the same option referring to the 1960 census map?

A. For the 1960 census map, that area is now totally orange, that being 50 to 85 percent non-white.

Q. And what about the rest of the Sherrill area south of Tireman?

A. The southern portion is now divided between red and orange, red being 85 to 100 percent non-white, orange being 50 to 85 percent non-white.

MR. CALDWELL: Plaintiffs' Exhibit 128-A, your Honor, reflects that in the 1960, '61 school year Mackenzie Senior High was 1.2 percent black. The Chadsey Senior High was 41.3 percent black. Plaintiffs' Exhibit 132 reflects that there were 6,547 black youngsters living in the Mackenzie High School area of which only 341 attended Mackenzie High School. That's 5.2 percent attended Mackenzie High School. Again, the system average at that time for black students was 12.4 percent, and each constellation was represented in the high school itself. With regard to Chadsey, also referring to Plaintiffs' Exhibit 132, there were 4,166 whites in the Chadsey constellation, of which 1,560, or 37.4 percent, were represented in the high school [1244] itself, and in the 1960, '61 year the system average for white students was that 19.6 percent were represented in the high school of each constellation. That is the average representation.

Q. (By Mr. Caldwell) Directing your attention now, Mr. Lamson, to an optional area in the northeastern portion of the Southeastern High School zone between that high school and the Denby High School, would you describe that optional area, please?

A. That optional area involving the Finney and Hanstein Schools as depicted in the boundary guide books – if I may correct what you said, it is not the northeastern portion of the Southeastern district.

Q. It is an optional area between Southeastern and Denby?

A. That's right, and it represents an option between the Denby High School and the Southeastern High School.

MR. CALDWELL: At that time, your Honor, Plaintiffs' Exhibit 128-A reflects that for the 1960, '61 school year Southeastern was 30.9 percent black. Denby was 0 percent black.

Q. (By Mr. Caldwell) Directing your attention now to the small portion of hatch marks between the Southwestern and Western zone, the southernmost portion of those zones, would you describe that optional area, please?

[1245] A. That area involves the Gillies Elementary School and represents an option, according to the boundary guide books, between Southwestern High School and Western High School.

Q. Referring you to the 1950 census map, would you describe the racial composition of the population in the optional area you have just described, being the Gillies optional area?

A. Primarily green, thus being 5 to 25 percent non-white with some white, that being 0 to 5 percent non-white.

Q. Referring you now to the 1960 census map, would you describe the racial composition of the population in that optional area?

A. Yes. It is now primarily blue, that being 25 to 50 percent non-white, a small portion in the southwestern corner of green, that being 0 to 25 percent non-white, and the northern portion of white, that being 0 to 5 percent non-white.

MR. CALDWELL: At that time, your Honor, Plaintiffs' Exhibit 128-A reflects that Western was 15.3 percent black; Southwestern was 61.6 percent black, and I don't know whether I previously stated this or not, but with regard to Plaintiffs' Exhibit 132, and this would be bearing on both the Gillies optional area between Western and Northwestern, in the 1960, '61 year there were 8,212 black students who attended school in the Western High

School [1246] constellation, that is, the elementary, junior and senior high schools. Of those 8212 only 263 were actually represented. Those who actually attended the high school there were 3.2 percent of the blacks in that constellation. Again the system average for that year was 12.4.

Q. (By Mr. Caldwell) Referring you again to the Southwestern High School area, there is a large optional area in the northwestern part of the Southwestern High School area. Would you describe that option and tell us what schools are involved?

A. That option involves the school, other totals or portions of the following school districts: Higgins, Bennett, Beard, Harms, Amos, and Neinas. Those schools that have portions not included in that optional area are the Higgins School, which is only partially included, the Beard School, which is only partially included, and the Amos School, which is only partially included. The option as described in the boundary books is an option between Southwestern High School and Western High School.

Q. With regard to the 1950 and 1960 census maps, it appears that in both of those censuses the optional area you described is white, is that correct?

A. That's correct.

Q. That being 0 to 5 percent non-white?

[1247] A. That's right.

Q. Let's turn to Plaintiffs' Exhibit 109-B, which is the '60 to '61 overlay. Would you describe the optional areas which appear that year?

A. The Winterhalter-McKerrow optional area between Mackenzie and Central continues according to the boundary books. The Doty optional area between Central and Northern High Schools continues. The Thirkell-Goldberg optional area between Northern and Northwestern continues. The Sherrill School option between Mackenzie and Chadsey High Schools continues. The Newberry School option between Northwestern and Chadsey High Schools continues. The option involving the Craft, Potter, Chaney, Kennedy, Owen Schools continues, that being between Northwestern and Western. The Finney-Hanstein option continues between Denby High School and Southeastern High School. The Gillies School option continues between South-

western and Western High School, and the Higgins, Harms, Bennett, Beard, Amos, Neinas School option continues between Southwestern and Western High Schools. There was also this year the Thomas School option indicated for the first time in the boundary books.

Q. With regard to the Thomas School option, what was the option at that school?

A. It was a junior high option between Greusel Junior High [1248] School and Burroughs Junior High Schoool.

Q. Would you describe the racial composition of that optional area as depicted on the 1960 census map?

A. On the 1960 census map the Thomas School area involves primarily orange, that being 50 to 85 percent non-white, and portions of it to the north of green, that being 5 to 25 percent non-white, and at the eastern portion of blue, that being 25 to 50 percent non-white.

Q. Would you describe the racial composition of the area in which the Burroughs Junior High School is located?

A. Burroughs Junior High School is an area that looks predominantly white with some introduction of green, white being 0 to 5 percent non-white, and green being 5 to 25 percent non-white.

Q. And would you describe the same for the Greusel Junior High School?

A. The Greusel Junior High School is an area that is primarily green with some white, green being 5 to 25 percent non-white, white being 0 to 5 percent non-white.

MR. CALDWELL: Plaintiffs' Exhibit 128-A, your Honor, reflects that for the 1960 school year the Burroughs Junior High School was 31.4 percent black, while the Greusel Junior High School was 74.7 percent black. The Thomas School was 83 percent black.

Q. (By Mr. Caldwell) Have you described all the optional areas [1249] on the '60, '61 overlay?

A. Yes, I have.

Q. Referring you now to the '61, '62 overlay, Plaintiffs' Exhibit 109-C, would you briefly describe the optional areas appearing on that overlay?

A. The Winterhalter-McKerrow option between MacKenzie High School and Central High School continues in that year. There is a change in the Central High boundaries as reflected in the boundary guide books. That boundary has been expanded to include that optional area, although the option continues. The Doty option between Central High School and Northern High School is no longer in existence. It has become a firm boundary between those two high schools. The Sherrill School option between Mackenzie High School and Chadsey High School continues. The Thirkell-Goldberg option between the Northern High School and the Northwestern High Schools continues. The Finney-Hanstein option between Denby and Southeastern no longer exists.

Q. For the first time in that area there appears a high school boundary line? The Finney High School attendance area was not in existence in the previous school year, was it?

A. That's right. The optional area involving the Newberry School no longer exisits. The optional area involving the Craft, Potter, Chaney, Kennedy, Owen Schools continues to [1250] exist between Northwestern High School and Western High School. The Gillies School option between Southwestern High School and Western High School continues to exist, and the option involving the Higgins, Harms, Bennett, Beard, Amos, Neinas Schools continues to exist between Southwestern High School and Western High School.

MR. CALDWELL: With regard to the existence of a Finney High School boundary this year, your Honor, Plaintiffs' Exhibit 79 reflects that the Finney Senior High School was built in 1961. Subject to correction, I think that there had been a Finney Junior High in the area at the time, and it was expanded to senior high level. I think this first year it only included the tenth grade students, and then it expanded from there, and I'm subject to correction on that.

Q. (By Mr. Caldwell) There is also a change in the Northwestern High School attendance area in the '61-'62 school year?

A. Yes, there is.

Q. And what was that change?

A. The change included the Northwestern High School area which was expanded to include the Newberry School, the Ellis School, and the Sill School, which were formerly in the Chadsey Constellation.

MR. CALDWELL: With regard to that change in the Northwestern-Chadsey joint boundary line, [1251] your Honor, Plaintiffs' Exhibit 80 reveals that in 1961, '61 or in 1960, '61, Chadsey had a capacity of 3,328 with an enrollment revealed on Plaintiffs' Exhibit 128-A of 2,976. Northwestern in the 1960, '61 had a capacity of 2,118 with an enrollment of 3,061 or 900-plus over capacity as compared to 100-plus under capacity for Chadsey.

Q. (By Mr. Caldwell) Would you describe the racial composition of the population of that portion of the boundary line between Northwestern and Chadsey which has changed as revealed by the 1960 census map?

A. The non-white population of that area is as follows: It is approximately 50 percent orange, orange being 50 to 85 percent non-white, a quarter blue, blue being 25 to 50 percent non-white, and about a quarter green, green being 5 to 25 percent non-white.

[1252] Q. Also on this '61-62 overlay I notice some areas defined in small lines with a "T" representing the area. What were those?

A. The "T" represents a new indication in the boundary guide books, that being temporary service areas. The description of the high school areas with that introduction is such that it does not include the temporary service area in its defined boundary but in fact does continue to serve that area as it did in the prior year.

Q. Turning now to the '62-63 overlay which is Plaintiff's Exhibit 109-D, would you describe the optional areas which exist in that school year?

A. The optional areas existing in that school year involve the Craft School – this being the optional area between Northwestern and Western, it involves the total Craft School area as in years prior but it now involves only a portion of the Potter-Chaney-

Kennedy-Owen School areas and that portion are those portions of elementary school areas above Myrtle Street, affecting north of Myrtle Street. The southern portion has now been included in the Western area.

The option between Southwestern High School and Western High School involving the Higgins, Harms, Bennett, Beard, Amos, Neinas Schools is still in existence. The Sherrill School option between Mackenzie High School and Chadsey High School is still in existence.

[1253] Q. Referring you to the Northeastern High School area there is now a small line or a thin line dividing that area approximately in half. It appears the line appeared for the first time in the previous year, that is 1961-62. You don't have a "T" designation in either one of those areas, could you describe that or explain it?

A. Yes. The total area in both the '61-62 map and the '62-63 map is still serviced by the Northeastern High School. However, the maps provided and the narrative descriptions provided and the feeder patterns provided and the boundary guide books indicate that in fact that Northeastern High School area has been put into two sections each having a separate feeder pattern as described and each having separate descriptions. The thin line dividing the two represents that division, the new division.

Q. Referring you now to the '63-64 overlay, would you describe the optional areas existing in that year?

A. All right. In the optional area between Northwestern High School and Western High School an option still exisits involving those portions of the Chaney and Kennedy Schools north of Myrtle Street. In the Southwestern-Western option involving the Higgins, Harms, Bennett and Beard Schools that option still exists as in prior years.

Q. Referring you now to the '64-65 overlay, Plaintiff's Exhibit [1254] 109-F, would you describe the optional areas which continue in that school year?

A. The optional area between Northwestern and Western High Schools involving the Chaney School, the portion of the Chaney School that is north of a line through Myrtle still exists and a portion of the Southwestern-Western High School option

involves the Higgins, Harms, Bennett and Beard Schools and still exists as they did in prior years.

Q. Referring you now to the 1965-66 overlay, would you describe the optional areas which exist in that year?

A. In that year the option between the Southwestern and Western High Schools involving the Higgins, Harms, Bennett and Beard School still exists as they did in prior years.

Q. On the '66-67 overlay, what optional areas exist?

A. The optional area between the Southwestern and Western High Schools involving Higgins, Harms, Bennett and Beard still exists as in prior years.

Q. Let's go back to the previous year just a minute, the 1965-66 overlay. That represents a new or depicts a new high school area, is that correct?

A. There are two.

Q. Would you describe those, please?

A. Yes. One is the Kettering High School area and the other is the Murray High School area or the Murray-Wright as it is [1255] generally referred to. This is the Kettering area, this is the Murray-Wright area. (Indicating)

Q. The Kettering area was that portion of the northern portion of the Northeastern zone which had been divided by a thin line in the previous overlays?

A. Yes.

Q. You stated that on the '66-67 overlay the Southwestern-Western option was the only one which continued?

A. That is right.

Q. What options appear on the 1967-68 overlay?

A. The 1967-68 overlay, the option that continues is the one between Southwester and Western High Schools involving the Higgins, Harms, Bennett and Beard Schools as in prior years.

Q. Does that option continue in 1968-69?

A. Yes, in the same manner.

Q. Does that option continue in 1969-70?

A. Yes, it does in the same manner as prior years.

Q. Does that option continue in the current school year, 1970-71?

A. As indicated in the boundary books for this year, 1970-71, it does. Information from Mr. Henrickson indicates it has been cancelled in this year with the 11th and 12th grade students in those areas still continuing in the option at Western High School or Southwestern High School and those students entering the 10th grade going to Southwestern High School.

[1256] Q. Referring you to the 1970 census map which is Plaintiff's Exhibit 136-C without placing the overlay on that map, can you describe – perhaps it would be better if we lifted this overlay off and moved it over there.

(The map was changed.)

Q. Could you describe the racial composition as revealed by the census map of that portion of the optional area between Southwestern and Western?

A. Yes, it's white, that being zero to 5 per cent non-white.

Q. Would you describe the remainder of the Southwestern High School area?

A. It has a large red portion in the southwestern corner, red being 85 to 100 per cent non-white and south of Fort Street it has a predominantly green area, green being 5 to 25 per cent non-white, a portion being orange, that being 50 to 85 per cent non-white, and some blue, that being 25 to 50 per cent non-white.

MR. CALDWELL: Your Honor, Plaintiff's Exhibit 128-B reflects that in the year 1969-70 on the Southwestern Senior High School information it was 86.7 per cent black. Plaintiff's Exhibit 132 reflects that in the 1969-70 school year there were 5265 white students attending school in the Southwestern constellation. Of those only 160 or 3 per cent attended Southwestern High School itself.

[1257] In 1970, Exhibit 128-B that reveals that Southwestern High School is 74.3 per cent black. Plaintiff's Exhibit 132 reveals that 7.9 per cent of the whites in Southwestern High School constellation are in the high school, there are 5473 whites attending school in the entire constellation of which 432 are attending school in the high school.

As Mr. Lamson stated, I believe the 10th and 11th graders are continuing where they elected to go last year.

A. That's right.

Q. So the option has been eliminated for this school year for those entering high school, that is, the 10th graders?

A. That is right.

Q. Referring to all of the overlays, Mr. Lamson, were there any optional areas in any of the years 1959 through 1970-70 in the Cody High School area?

A. No, there were not.

Q. As reflected on both or as reflected on the 1960 census map what was the racial composition of the population in the Cody High School area?

A. It looks to be entirely white, zero to 5 per cent non-white.

Q. Were there any optional areas in the Redford High School areas for those years 1959 through 1970-71?

A. No.

[1258] Q. Were there any in the Ford High School area?

A. No, there were not.

Q. What was the racial composition as reflected by the census map of those two high school areas?

A. In 1960?

Q. Yes.

A. By the 1960 census map those areas were white, that being zero to 5 per cent non-white.

Q. Were there any optional areas in the Osborn High School area?

A. No, there were not.

Q. What was the racial composition of the Osborn High School areas as reflected by the '60 census map through the '66-67 school year as that area was defined?

A. It looks to be almost 90 per cent white, that being zero to 5 per cent non-white with portion of blue on the western side,

blue being 25 to 50 per cent non-white and a small portion of green on the same side, that being 5 to 25 per cent non-white.

MR. CALDWELL: Your Honor, with reference to something that came up the other day I would like to read one sentence from Plaintiff's Exhibit 78-A which is the September 1959 boundary guide book. I am reading from the center district book, the Northwestern feeder pattern which is described on pages 25 and 26. I will turn back to the Northern pattern feeder maps on page 23 and 24. There is a [1259] footnote for Northern Senior High School that Northern will continue to serve the 9B, the 12A pupils from the Carver School district, Ferndale. That is in the 1959-60 boundary guide book.

Q. (By Mr. Caldwell) Let's turn back to the 1959-60 overlay. Do you have another overlay representing this area here?

A. Yes, I do. It's not in this room, it's in the jury room.

MR. CALDWELL: May I take just a minute to get something out of the jury room?

THE COURT: Fine.

(Mr. Caldwell left the room.)

THE COURT: During this pause if there are any last minute matters which normally you bring up at one o'clock or a little after would you bring them up now? We are going to recess I propose at one o'clock.

MR. CURTNER: We have nothing, your Honor.

Q. (By Mr. Caldwell) I hand you a clear plastic overlay with black lines on it marked Plaintiff's Exhibit 109-M. Did you prepare that.

A. Yes, I did.

Q. Would you describe what that represents?

A. It represents the Jefferson Junior High attendance area in 1959-60 as represented in the boundary guide books.

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[1261] Q. Let me refer you, Mr. Lamson, to the boundary guide book for 1959, Plaintiffs' Exhibit 78-A. I ask you if Plaintiffs' Exhibit 109-M conforms to it, to certain portions of the map in the south district booklet, and if so, would you describe those portions of the map it represents?

A. It represents those portions of the map included in the Jefferson Junior High School attendance area as represented by the map and the narrative description.

Q. What are those elementary schools?

A. The elementary schools are the Hancock School, the Tilden, Edmonson-Poe School, Couzens School, Burton School, and Irving School.

Q. Would you point out each of those schools on the overlay, please, 109-M?

A. I would like to include the Kennedy School in that.

Q. Where is the Kennedy School?

A. The Kennedy School is the furthest west.

Q. Where is Owen?

A. Owen is the one just to the east of the Kennedy School.

Q. What is the next school over?

A. The next school further east?

Q. Yes.

A. The Couzens School.

Q. And then?

[1262] A. The Burton School.

Q. What is the one above Burton?

A. The Irving School.

Q. And the one to the west of Burton?

A. Most immediately the Post School – well, right in practically the same building as the Edmonson School.

Q. To the north of the Edmonson-Poe School?

A. Tilden School, and the remainder is the Hancock.

Q. That is in the northwestern portion of the exhibit?

A. That's right.

Q. Now, with regard to the Couzens, Edmonson-Poe, let me show you Plaintiffs' Exhibit 78-A, which is the 1959 boundary guide book, and I refer to page 25, and could you identify what appears on page 25?

A. Page 25 are the feeder patterns for Northwestern High School. There are three columns, one the elementary school, one the junior high school, and finally the senior high school. Under the elementary schools are listed all the elementary schools, and there are arrows indicating to which junior high schools they go to, and then there are arrows indicating to which high schools those pupils subsequently go to.

Q. What does that page indicate the junior high feeder pattern is for Couzens?

A. Edmonson and Poe. The junior high feeder pattern involves [1263] Jefferson High School and Hutchins High School. There is a footnote.

Q. Is that footnote 1?

A. Yes.

Q. Would you read the footnote?

A. Footnote 1 says, "Children living in the Jeffries Homes in the building west of the John Lodge Expressway attend Hutchins for grades 7-B through 9-A, and then Northwestern High School. The children living east of John Lodge Expressway attend Jefferson for grades 7-B through 9-A and then Northwestern High School."

MR. CALDWELL: Plaintiffs' Exhibit 128-A, your Honor, reflects that in 1960, '61 Jefferson Junior High School was 46.3 percent black, and the Hutchins Junior High School was 96.9 percent black.

Q. (By Mr. Caldwell) Now, Mr. Lamson, the feeder pattern you just described, would you point out that feeder pattern on Plaintiffs' Exhibit 109-M as you have depicted it here? First of all, would you describe where the Couzens School is in relation to the Jeffries Housing Project?

A. The Couzens School is just across the Expressway from

the southern portion of the Jeffries Housing Project.

Q. And where is the Edmonson-Poe School in relation to the Jeffries Housing Project?

[1264] A. The Edmonson and Poe Schools are at the northern perimeter of that project.

Q. Now, where is the Jefferson Junior High School in relation to the Jefferies Housing Project?

A. The Jefferson Junior High School is directly across the Expressway from the center of the project.

Q. Is that where I'm pointing to now?

A. That's right.

MR. CALDWELL: Referring you again to Plaintiffs' Exhibit 128-A, your Honor, it reflects that the Couzens School was 96 percent black. The Edmonson was 63.4 per cent black, and the Poe was 82.4 percent black.

Q. (By Mr. Caldwell) Now, would you describe the feeder pattern as described in the boundary guide book which you read from on your overlay 109-M, first of all with regard to the Jeffries Housing Project youngsters?

A. The Junior High Feeder Pattern as described by 78-A indicates that the pupils from this orange portion leave the Jefferson attendance area and attend Hutchins Junior High School up in the northern area. The remainder of the feeder pattern indicates that the children attending those schools in the periphery of the Jefferson attendance area, that being the green and blue area, attend the Jefferson Junior High School.

[1265] Q. Referring you now to the 1960 census map, will you describe the racial composition of the population in the area, which is where the Jeffries Housing Project is located?

A. It is orange, that being 50 to 85 percent non-white.

Q. And that is east of the Expressway?

A. That's right.

Q. What is the racial composition of the area west of the Expressway?

A. I would correct that. That is west of the Expressway.

Q. I'm sorry. West of the Expressway. What is the racial composition of the area east of the Expressway?

A. Predominantly green, 5 to 25 percent non-white with two portions of blue, that being 25 to 50 percent non-white.

[1266] Q. And on the west side of the freeway again north of the project in the Edmonson-Poe area what is the racial composition of the population in that area?

A. In the Poe district that area north of the project is green, that being 5 to 25 per cent non-white, and the Edmonson district, that is predominantly blue, that being 25 to 50 per cent non-white with small portions of orange, 50 to 85 per cent non-white.

Q. To the north of the Edmonson and Poe, these boundary lines in the large lines represent the elementary boundary lines?

A. That's right.

Q. What is this school in the northern most boundary line?

A. That is the Tilden School.

Q. And what is the racial compositon of the area in that school zone as reflected by the 1960 census map?

A. The racial composition is primarily green, that being 5 to 25 per cent non-white with probably the other half equally divided between blue and orange, blue being 25 to 50 per cent non-white, and orange being 50 to 85 per cent non-white.

Q. In comparing the distances between the Jeffries housing project and Hutchins and the Tilden School and Hutchins, how much closer, if any, is the Tilden School than the Jeffries housing project? Is it about half the distance?

A. Yes.

[1267] Q. Does the feeder pattern indicate that any youngsters from the Tilden School went to Hutchins Junior High School?

A. No, it did not.

MR. CALDWELL: Your Honor, Plaintiff's Exhibit 18-A, if I may, reflects that the Jeffries housing project on July 12, 1960 contained 1892 non-white families, and that the project was 93 per cent non-white.

Q. (By Mr. Caldwell) Now, also on this overlay 109-M the Burton School is described?

A. Yes, it is.

Q. Would you point out for the Court, please, where the Burton School is?

A. The Burton School is in the southeast corner of the Jefferson High School attendance area. That is the northern boundary, being Martin Place, and the western boundary, Fort Street, the eastern and southern boundaries conforming to the boundaries of Jefferson Junior High School.

MR. CALDWELL: Let me back up just a minute, your Honor, to the previous example when Tilden School was mentioned. Plaintiff's Exhibit 128-A reflects that the Tilden School in 1960-61 was 50.3 per cent black.

Q. (By Mr. Caldwell) Now, with regard to the Burton School, what do the boundary guide books indicate the junior high feeder pattern for that school was? Let me refer you to 78-B.

[1268] MR. CALDWELL: Your Honor, let me drop that example for the moment. I can't seem to find the exhibit page that I had made a note from.

Q. (By Mr. Caldwell) In 1959, on the 1959 overlay would you point out where the A.L. Holmes School is?

A. The A.L. Holmes School is just north of Gratiot, just northwest of the intersection of Gratiot and Harper.

Q. Do you recall the feeder pattern from the boundary guide books with regard to A.L. Holmes?

A. Yes, I do.

Q. Would you describe that feeder pattern, please?

A. The feeder pattern indicates that the pupils in the A.L. Holmes attendance area living north of Gratiot would attend Northeastern High School, and that the pupils in the A.L. Holmes attendance area living south of Gratiot would attend Southeastern High School.

Q. And with regard to the 1960 census map, what is the racial composition of the A.L. Holmes area in that portion of the zone north of Gratiot, or northwest of Gratiot?

A. It is green and white, green being 5 to 25 per cent non-white, and white being zero to 5 per cent non-white.

Q. And what is the color of the A.L. Holmes zone which is

southeast of Gratiot?

A. It is white, that being zero to 5 per cent non-white.

[1269] Q. Referring you now to the Custer School, could you point out on the map where the Custer School is?

A. Yes. It is just to the north of the Central High School. It has Highland Park as its eastern boundary. The northern boundary is Pilgrim. Dexter appears to be the western boundary.

Q. Do you recall the feeder pattern for Custer with regard to the junior high school in 1959-60 and '61?

A. Yes, I do.

Q. What was that feeder pattern?

A. They went to Post Junior High School.

Q. Did Post Junior High School feed into Mumford at that time?

A. Yes, it did.

Q. Where did the Custer youngsters go to high school?

A. Central.

MR. CALDWELL: At that time, your Honor, Plaintiff's Exhibit 128-A reflects that the Custer School was 97.4 per cent black. The Post Junior High School was 11.9 per cent black. Mumford was 16.1 per cent black, while Central was 97.2 per cent black.

Q. (By Mr. Caldwell) Now, in 1961, '62, did the feeder pattern change for Custer?

A. Yes, it did.

Q. And what high school did Custer feed to in 1960, '62?

A. Mumford, still attending Post Junior High School.

[1270] MR. CALDWELL: And in that year, your Honor, Plaintiff's Exhibit 128-A reflects that Mumford was 29.8 per cent black.

Q. (By Mr. Caldwell) Now, did Custer continue this feeder pattern into Mumford until 1968?

A. Yes, it did.

Q. And what was the feeder pattern change made in '67, '68?

A. It fed into Cooley after attending Post.

MR. CALDWELL: In 1967, '68, your Honor, Custer was 99.3 per cent black. Cooley was 27.2 per cent black.

Q. (By Mr. Caldwell) Now, was another change made in '68, '69?

A. Yes.

Q. What was that change?

A. Custer once again fed Central High School after Post.

MR. CALDWELL: In 1968, '69 Central was 99.9 per cent black.

Q. (By Mr. Caldwell) Now, directing your attention to the Vandenburg- Vernor area –

MR. CALDWELL: Your Honor, I have copies of the Mumford High School district in 1959 which is taken from Plaintiff's Exhibit 78-A, and this makes it easier to see the schools.

[1271] Q. Let's get back to the 1962-'63 overlay.

Prior to the 1962-'63 – first of all, will you point out to the Court where the Vandenberg and Vernor Schools are.

A. This triangle to the northwest corner of this area. (indicating)

Q. Prior to 1962-63 where did the Vernor and Vanderburg youngsters go to high school?

A. Mumford High School.

Q. A boundary change was made in 1962-63?

A. That's right.

Q. Where did those youngsters go to school in that year?

A. Ford High School.

Q. How long did that feeder pattern continue?

A. Until 1966-67 when they returned to Mumford.

Q. All right.

MR. CALDWELL: Plaintiffs' Exhibit 128-A, your Honor, reflects that in 1960 Vandenburg and Vernor were 0 percent black. Mumford was 16.1 percent black, Ford was .1 percent black. With regard to Vandenburg and Vernor, there was a gradual increase in the black population until 1966 when Vandenburg was

39.5 percent black and Vernor was 39.8 percent black.

Then in 1967 the change was made taking [1272] Vandenburg and Vernor back into Mumford. Vandenburg had become 70 percent black, Vernor had become 63.2 percent black. That year the change was made and Mumford was 78.1 percent black, Ford was 4.1 percent black.

Q. I believe that feeder pattern continued into the current school year?

A. That is right.

Q. Those schools now feed back into Ford High School this year?

A. That is right.

Q. Directing your attention to the Mumford area again, with regard to the Higginbotham School, would you point out where the Higginbotham School is located in the Mumford area?

A. It is approximately to the western portion of this red and orange portion of the map. There is a green square in there.

Q. What is the green square?

A. A piece of park.

Q. What is the racial composition of that area as indicated by the 1960 census map?

A. It's two-thirds orange, that being 50 to 85 percent non-white and one-third red, that being 85 to 100 percent non-white.

Q. In reference to the Higginbotham School, what were the surrounding schools, and would you describe where those are situation in relation to the Higginbotham School.

A. Directly to the west are the Vandenburg-Vernor schools, to [1273] the south are the Mac Dowell, Schulze, Bagley Schools. To the east is the Pasteur School, to the southeast is the Hampton School and further southeast the Hally School.

Q. The Higginbotham zone is completely surrounded by Pasteur and Mac Dowell?

A. That is right.

MR. CALDWELL: Plaintiffs' Exhibit 128-A reflects, your Honor, in the 1960-61 school year, that Higginbotham was 99.4 percent black, Pasteur was 23.8 percent black, MacDowell was 35.3 percent black. I think Vandenburg and Vernor were 0 percent black, as were Schulze and Bagley. Hampton also was 0 percent black.

Q. What do the boundary books indicate that the grade structures of those schools that you have just described in the Higginbotham area were in 1959-60?

A. The Higginbotham – you want that area or those surrounding the school?

Q. All of those schools.

A. The Higginbotham School was a K through 8, Mac Dowell was K through 8, Pasteur was K through 8, that being 8-A. The Vanderburg K through 8-A, Vernor K through 8-A, Schulze K through 6-A, Bagley K through 6-A, Hampton K through 8-A, Hally K through 8-A.

Q. With regard to the feeder pattern all of those schools after [1274] the eighth grade feed directly into Mumford High School?

A. That is right.

Q. Do you recall whether the boundary guide book indicates any transportation in that area?

A. I don't recall.

MR. CALDWELL: Your Honor, Plaintiffs' Exhibit 63, "Transportation to Relieve Overcrowding, 1960 to 1970," reflects that in 1960-61, that school year, 118 pupils were transported from Angell –

Would you point out Angell on the map, please?

A. If I can use the big map I can see it.

Q. Would you do that, please.

A. It is indicated here as Angell and Angell Elementary. (Indicating)

Q. Would you point out the Higginbotham School?

A. Higginbotham School is there (indicating).

Q. Referring now to the 1970-71 overlays on the large map, Exhibit 2–

As I was stating, Plaintiffs' Exhibit 63 indicates 118 students in 1960-61 were transported from Angell which is 98.7 percent black to Higginbotham, which is 99.4 percent black.

How far on the scale of this map is [1275] the Angell to Higginbotham Schools?

A. This map is six inches equals one mile. As the crow flies it is approximately 35 inches which makes it five miles and five-sixths of an inch, or five-sixth of a mile.

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[1276] . . .

MR. CALDWELL: Yes, your Honor, I am already mindful of them. Plaintiffs' Exhibit 80, if I may recall, Plaintiffs' Exhibit 80 is a large folder with about 10 small folders in it representing each year for the [1277] capacity charts. The chart dated February, 1961 which would be the 1960, '61 school year indicates for the Higginbotham School that it was 81 over capacity which is more than my mathematics comes out to.

MR. VON ENDE: I will withdraw my previous objection and let his testimony stand.

MR. CALDWELL: While I am referring to the capacity charts, let me point out the same exhibit from which I am reading shows that the Fitzgerald School –

Would you point out the Fitzgerald School on the map, Mr. Lamson.

(The witness indicated the school.)

MR. CALDWELL: Which in 1960-61 was 19.6 percent black according to Plaintiffs' Exhibit 128-A. That school was 100 under capacity according to Plaintiffs' Exhibit 80.

The Mac Dowell School, which is immediately to the south of the Higginbotham School, this is again 1960-61, was 80 under capacity.

The Pasteur School, which is to the southeast of the Higginbotham School, was 172 pupils under capacity. The Bagley School, which is to the south of Higginbotham, southwest, was 185 pupils under capacity.

Let me back up and correct myself there.

[1278] Pasteur was 172 pupils over capacity at that time, rather than under capacity, so that the school which borders Higginbotham to the east was over capacity by 172.

The Hampton School, which is to the south of the Higginbotham School, was 84 under capacity. While I am on capacity, let me turn to the Hally School which in 1960-61, according to Plaintiffs' Exhibit 80, was 89 over capacity.

[1279] Q. (By Mr. Caldwell) Would you point out the schools which surround the Hally School, please, Mr. Lamson?

A. Within the Mumford zone?

Q. Yes.

A. What year?

Q. Is the Hampton School close to the Hally School?

A. It is north.

Q. Is the Fitzgerald School close to the Hally School?

A. Miles to the west.

Q. I'm speaking of the zone. And the Bagley, where is that in reference to the Hally School?

A. To the northwest.

MR. CALDWELL: Now, on the Mumford High School map that I have passed out to the Court and counsel, I think you can see the relationship of those schools to Hally. In 1960, '61 Hally was 94 per cent black, while Hampton was .1 per cent black. Fitzgerald was 19.6 per cent black, and Bagley was zero per cent black.

Your Honor, I think my next example will take more than the thirty seconds before one o'clock, and perhaps this would be a good stopping place for the day.

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[1291] WILLIAM LAMSON resumed the stand as a witness on behalf of Plaintiffs and having been previously duly sworn, testified further as follows:

[1292] DIRECT EXAMINATION BY MR. CALDWELL: (continued)

Q. Would you step down to the map, please.

Last Friday, Mr. Lamson, we were –

MR. BUSHNELL: I can't hear you.

Q. Last Friday, Mr. Lamson, we were referring to Plaintiffs' Exhibit 109-M, which was admitted and you testified concerning the Jefferson Junior High Feeder Pattern. Would you point out in that feeder pattern on Plaintiff's Exhibit 109-M where the Burton Elementary School is located?

A. Burton Elementary on that overlay is in the southeast corner of the Jefferson attendance zone.

Q. Will you point out where the Irving School is located?

A. The Irving School is immediately above it.

Q. Do you recall the junior high feeder pattern for those two schools?

A. According to the boundary guide books the feeder pattern for those two schools involves two things: those pupils living west of a line through the middle of Woodward will attend Jefferson Junior High School and those people living east of a line of Woodward will attend Garfield School.

MR. BUSHNELL: What year?

A. It's in 1959.

MR. BUSHNELL: I will object. Remote [1293] as to time and place.

THE COURT: Objection overruled.

MR. CALDWELL: For the record, your Honor, Plaintiffs' Exhibit 128-A reflects that Jefferson High School –

MR. BUSHNELL: If the Court please, I am going to object to Mr. Caldwell reading into the record what the exhibit says. The exhibit speaks for itself. Further, Mr. Caldwell does not read everything into the record that these exhibits state, but is simply selective in what he chooses to read.

THE COURT: I would hope he wouldn't read everything at this point. I think it is beneficial to me to have him correlate data which reflects or concerns the matter testified to by the witness.

MR. BUSHNELL: I will note a continuing objection on the further ground that it is grossly prejudicial, if the Court please.

THE COURT: The objection is overruled. You may proceed.

MR. CALDWELL: Thank you, your Honor. Plaintiffs' Exhibit 128-A reflects Jefferson High School was 46.3 percent black in 1960-61; that Garfield Junior High School was 99.1 percent black in 1960-61.

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[1296] . . .

Q. (By Mr. Caldwell) Would you look at Plaintiffs' Exhibit 78-B and describe the feeder pattern for the Burton and Irving Elementary Schools with regard to junior high in 1960-61?

A. On page 14 of Plaintiffs' Exhibit 78-B, feeder pattern as described in the boundary guide book is Burton and Irving Elementary Schools, K through 6-A, each attend Jefferson Junior High School 7-B through 9-A, and then go to attend senior high school at Northern.

Q. Let me refer you to the Center District book at page 23, Mr. Lamson, in Plaintiffs' Exhibit 78-B, and ask you to describe from this the Burton and Irving elementary feeder patterns with regard to junior high.

A. Page 23 of Plaintiffs' Exhibit 78-B, under the Northern High School feeder pattern, indicates Burton and Irving K through 6-A each attend Jefferson High 7-B through 9-A, and then Northern. There is a footnote. Footnote 1 reads:

"Pupils living west of Woodward attend Jefferson. Pupils living east of Woodward attend Garfield."

Q. Referring you now to the 1960 census map, Plaintiffs' Exhibit 136-B, would you describe the racial composition of the area east and west of Woodward in the Burton and Irving elementary zones.

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[1297] . . .

A. As reflected by the 1960 census map, the population west of the line through the center of Woodward is primarily green, that being 5 to 25 percent non-white, the small portions of blue in

both Irving and Burton areas, blue being 25 to 50 percent non-white. To the east of the line through the center of Woodward the population is primarily orange in both Irving and Burton, and in the Irving – that is orange being 50 to 85 percent non-white, and in the Irving zone in the northeast corner there is a small portion of red, being 85 to 100 percent non-white.

Q. Do you recall the junior high feeder pattern in the following year, 1961 - 1962?

A. Yes, I do.

Q. What was that feeder pattern?

A. According to the boundary guide books there is the initiation of Spain Junior High School and those portions of the Irving and Burton areas previously assigned to the Garfield School now attend Spain Junior High School.

MR. CALDWELL: Your Honor, Plaintiffs' Exhibit 79-C, concerning construction and additions reflects that Spain Junior High opened in 1962 with an enrollment that [1298] was 100 percent black.

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[1300] . . .

MR. BUSHNELL: 109-N, for Nancy?

MR. CALDWELL: No, 109-0.

MR. BUSHNELL: I had better look again.

MR. CALDWELL: I do have an "N" somewhere, but it has not been offered, either.

Q. (By Mr. Caldwell) Did you prepare the overlay?

A. Yes, I did.

Q. And what source did you use in preparing it?

[1301] A. I used the boundary guide book from 1959-60.

Q. And what does the overlay show?

A. The overlay indicates the Nolan area, the Nolan Junior High area and the Cleveland Junior High School areas, and their common boundary.

MR. CALDWELL: Your Honor, at this time I would offer Plaintiffs' Exhibit 109-0.

MR. BUSHNELL: No objections.

THE COURT: The exhibit may be received.

Q. (By Mr. Caldwell) Would you point out, please, the Cleveland Junior High School?

A. Yes. The Cleveland Junior High School is the southeastern junior high school attendance area.

Q. Would you point out the Nolan Junior High School?

A. Nolan Junior High School is to the northwest of Cleveland.

Q. Would you point out the Courville Elementary School?

A. The Courville Elementary School is the one situated in the centermost orange district.

Q. Do you recall the feeder pattern for the Courville Elementary School?

A. According to the boundary guide books, those children living west –

MR. BUSHNELL: What year are we talking about?

[1302] A. 1959-60. Those children living west of this rather jagged line passing through approximately the center of the zone will attend the Nolan Junior High, and those living east of the same jagged line passing through the center of the Courville school district will attend the Cleveland Junior High.

Q. (By Mr. Caldwell) Did that same feeder pattern continue in 1960-61?

A. Yes, it did.

MR. CALDWELL: Your Honor, Plaintiffs' Exhibit 148-A reflects that the Courville Elementary School was 90.2 percent black in 1960-61. The Cleveland Junior High School was 77 percent black. The Nolan Junior High School was 16.1 percent black.

Q. (By Mr. Caldwell) Would you describe or name the other elementary schools shown in both the Cleveland and the Nolan Junior High School constellation in that year?

A. In the Nolan constellation there is the Greenfield Park School, the Greenfield Union School, the Grayling School, the Marshall School, and the Mason School.

Q. Let me interrupt you there just a minute.

MR. CALDWELL: Plaintiffs' Exhibit 128-A, your Honor, reflects that Grayling was 0 percent black. Plaintiffs' Exhibit 80 reflects that Grayling was under [1303] capacity by 306. Plaintiffs' Exhibit 128-A reflects that Greenfield Union was 0 percent black, and Plaintiffs' Exhibit 80 reflects that that school was under capacity by 30. Plaintiffs' Exhibit 128-A reflects that Marshall was .1 percent black, and that that school as reflected by Exhibit 80 was under capacity by 435. Plaintiffs' Exhibit 128-A shows that Mason was 0 percent black, and Exhibit 80 shows that Mason was under capacity by 244. Also Plaintiffs' Exhibit 128-A shows that Greenfield Park was 11.9 percent black, and that that school, according to Exhibit 80, was over capacity by 16. Also with regard to Greenfield Park, Plaintiffs' Exhibit 63, which is the transportation to relieve overcrowding exhibit, reveals that 186 students were being bussed from Angell to Greenfield Park in 1960-61.

Q. (By Mr. Caldwell) Would you name the schools in the Cleveland Junior High feeder pattern?

A. The Washington School, the Davison School, the White School, and I believe it is the Atkinson School.

MR. CALDWELL: Plaintiffs' Exhibit 128-A, your Honor, reveals that Atkinson School was 98.4 percent black. Davison was 89.6 percent black. Washington was 99.3 percent black, and White was 40.2 percent black. Plaintiffs' Exhibit 80 reveals that Atkinson was under-crowded by 39, under capacity by 39. Davison was under capacity by 314. [1304] Washington was over capacity by 194. White was under capacity by 170. Also Plaintiffs' Exhibit 80 reveals that Courville was under capacity by 14 in that year.

Q. (By Mr. Caldwell) Referring you now, Mr. Lamson, to the 1950 census map, would you describe the racial composition of the Cleveland Junior High area as revealed by that map?

MR. BUSHNELL: Same objection, if the Court please. It is not related to –

THE COURT: Objection overruled.

A. The racial composition of the –

MR. BUSHNELL: Excuse me. I have a further objection that the '50 census data has absolutely no relation to 1960 conditions.

THE COURT: Proceed.

A. According to the 1950 census map, the racial composition of the Cleveland Junior High area is approximately one-third white, white being 0 to 5 percent non-white, one-third blue, blue being 25 to 50 percent non-white, and one- third orange, orange being 50 to 85 percent non-white.

Q. (By Mr. Caldwell) Also with regard to the 1950 census map, what was the racial composition of the Nolan Junior High area?

A. The Nolan Junior High area was predominantly white, white being 0 to 5 percent non-white, with a small section of [1305] blue, blue being 25 to 50 percent non-white, and a very small piece of orange, that being 50 to 85 percent non-white.

Q. Also directing your attention to the Courville Elementary School, with regard to the 1950 census map you have testified that in 1959 to 1960 that school was divided as far as its junior high feeder pattern is concerned. With regard to that dividing line, that jagged line which divides Courville Elementary zone, what is the racial composition of the northwest portion of the Courville Elementary School as reflected by the 1950 census map?

A. The northwest portion is equally divided between white, which is 0 to 5 percent non-white, and blue, which is 25 to 50 percent non-white.

Q. And what about the southeast portion of the Courville Elementary zone?

A. The southeast portion of the Courville Elementary zone, according to the 1950 census map, is primarily orange, that being 50 to 85 percent non-white, a small piece of blue, that being 25 to 50 percent non-white.

Q. Directing your attention now to the 1960 census map and also to Nolan Junior High and Cleveland Junior High feeder patterns, would you describe the racial composition of the Cleveland Junior High area as revealed by the census map?

A. According to the 1960 census map the racial composition of [1306] Cleveland Junior High attendance area is approximately one-half orange, orange being 50 to 85 percent non-white, and the other half being equally divided between four colors, I would say, green, green being 5 to 25 percent non-white, white, white being 0 to 5 percent non-white, red, red being 85 to 100 percent non-white, and blue, blue being 25 to 50 percent non-white.

Q. Would you describe the racial composition of the Nolan Junior High area as revealed by the 1960 census map?

A. The Nolan Junior High area is white, white being 0 to 5 percent non-white, a southeast corner of orange, orange being 50 to 85 percent non-white.

Q. Would you point out, please, the Davison and White Elementary Schools?

A. Davison School sits just a little to the east of center of this orange section, the western portion of the Cleveland attendance zone, and the White sits approximately in the center of the eastern portion of the Cleveland elementary zone.

Q. Prior to 1967-68, what did the boundary guide books show that the feeder pattern for those two elementary schools was with regard to senior high schools?

A. Prior to 1967-68 according to the boundary guide book, both of these schools attended Pershing High School.

[1306-A] MR. CALDWELL: Your Honor, Plaintiffs' Exhibit 128-B reflects that in 1967-68 Davison was 95.5 percent black. White was 38.3 percent black. Pershing was 51.2 percent black.

Q. (By Mr. Caldwell) What feeder pattern change was made in 1967-68?

A. According to the boundary guide book in the 1967-68 school year both of those schools were changed to feed into Osborn High School.

MR. CALDWELL: Exhibit 128-B reflects, your Honor, that in that year Osborn was 12.5 percent black.

Q. (By Mr. Caldwell) How long did that feeder pattern continue?

A. It continued until the 1969-70 school year, according to the boundary guide books.

Q. And what change was made in that year?

A. In 1969-70, according to the boundary guide books, the Davison School was once again channeled into Pershing, and the White School remained in the Osborn feeder pattern.

MR. CALDWELL: In 1969-70, your Honor, Plaintiffs' Exhibit 128-B reveals that Davison was 97.2 percent black. Osborn was 14.5 percent black, and Pershing was 57.7 percent black. I might note for the record that –

MR. BUSHNELL: (Interposing) What was White, sir?

[1306-B] MR. CALDWELL: I was just going to look. I might note for the record that the 1969-70 racial count which is Plaintiffs' Exhibit 78-K does not show Davison feeding into Pershing, but shows it feeding into Osborn as it had done in '68-69. The 1970-71 racial count, Plaintiffs' Exhibit 10, does show Davison feeding into Pershing. That is, as Mr. Lamson has described it, for the '69-70 school year. In '69-70 White was 42.5 percent black. Osborn was 14.0 percent black. In 1969-70 White was 36.8 percent black. Davison in the current school year is 98.9 percent black. All this is reflected by Plaintiffs' Exhibit 128-B.

Q. (By Mr. Caldwell) Directing your attention, Mr. Lamson, to an overlay marked Plaintiffs' Exhibit 109-P and which is placed on the overlay marked 109-A, I would ask you if you prepared that exhibit?

A. Yes, I did.

Q. And what source did you use?

A. I used the Detroit Public School Boundary Guide Book for the year 1959-60.

Q. And what does the exhibit show generally?

A. I might include that I also used some subsequent boundary guide books up until approximately '63-64. I can check by the overlays, if I may.

Q. Yes, please.

[1306-C] A. All right. I also used the '61-62 boundary guide book, and the '64-65 boundary guide book.

[1306-D] MR. CALDWELL: At this time I will offer Plaintiff's Exhibit 109-P.

MR. BUSHNELL: What schools?

Q. (By Mr. Caldwell) Would you identify the schools which they overlay?

A. Yes, this involves an area between Chadsey High School and the Northwestern High School. It involves the grade schools.

MR. BUSHNELL: That is enough, sir, just so we can get identification.

MR. CALDWELL: I would offer the exhibit, your Honor.

THE COURT: Any objection?

MR. BUSHNELL: No objection.

THE COURT: It may be received.

Q. (By Mr. Caldwell) Was a boundary change made between the Northwestern and Chadsey High Schools in 1961-62?

A. Yes, there was according to the boundary guide book.

MR. CALDWELL: Your Honor, this boundary change involving the Newberry and Ellis Schools we previously described last Friday. At that time at transcript pages 1250 and 1251 I read into the record from Plaintiff's Exhibit 80, the capacities for Northwestern and Chadsey Senior High Schools for the year 1961-62 and, keeping in mind Mr. Bushnell's objection about correlating dates insofar as possible, let me [1307] add in 1961-62 the year the boundary change was made Plaintiff's Exhibit 80 revealed that Northwestern had a capacity of 1870 and that the school was 1073 over capacity while Chadsey had a capacity of 2950 and was 188 under capacity.

Q. (By Mr. Caldwell) In 1961-62, what were the elementary schools in the Chadsey School area?

A. They were the O.W. Holmes School, the Priest School; the Hanneman School, Sherrill School, the Clippert School and the Logan School.

Q. All right.

MR. CALDWELL: In 1962, your Honor, Plaintiff's Exhibit 128-A reflects the Clippert School was 56.8 per cent black, the Hanneman School was 48.5 per cent black, the O.W. Holmes was

54.9 per cent black. Logan was 4.1 per cent black, Priest was 32.2 per cent black, Sampson was 98.9 per cent black and Sherrill was 98.9 per cent black.

Q. What was the grade structure of those schools during that year, Mr. Lamson?

A. According to the boundary guide book for '61-62 they were K through 8's.

Q. Where did they feed after the 8th grade?

A. They went right into Chadsey High School. There is an exception, of course, that the northern portion of the Sherrill School had the option to go to Mackenzie High School. I would [1308] like to expand my identification of schools to include that the Sampson School which you mentioned and I didn't, was designated as a temporary service area.

Q. With regard to the schools involved in the boundary change what were those schools again?

A. Those schools were the Newberry, Ellis and Sill Elementary Schools.

Q. What schools did those feed into for junior high school?

A. They go to the Condon Junior High School according to the boundary guide books.

Q. In 1961-62?

A. Yes.

MR. CALDWELL: In that year, as previously mentioned, Newberry was 91 per cent black and Ellis and Sill, the racial count that year showed Ellis and Sill included together, are 75.8 per cent black.

Plaintiff's Exhibit 79 reveals that an addition was made to the Condon Junior High School in 1962 and that in that year the school had an enrollment of 1043 and Condon Junior High was 93.0 per cent black.

Q. (By Mr. Caldwell) Referring you to the Sampson School which you designated as a temporary service area, in 1961-62 where does Sampson – Sampson is a K to 8A school also?

A. Yes.

[1309] Q. Where does it go to high school?

A. Chadsey High School in '61-62.

Q. How long does it continue to go to Chadsey High School?

A. According to the boundary guide books, according to 1964-65 it changes its attendance area to be included in the Northwestern constellation.

MR. CALDWELL: Plaintiff's Exhibit 128-A reflects, your Honor, that Sampson in 1964-65 was 99.5 per cent black. Chadsey was 49.1 per cent black and Northwestern was 99.5 per cent black.

Q. Do you recall the junior high school which Sampson fed into?

A. No, I don't know once it is into the Northwestern area. I don't recall.

Q. Could you refer to Plaintiff's Exhibit 78-F which is the 1964-65 boundary guide book?

A. On page 15 of Plaintiff's Exihibit 78-F the feeder pattern in the Northwestern High School Region 2 reads, "Sampson K through 7A attends Webber 7B through 9A, and then Northwestern Senior High School 10B through 12A." There is another footnote – do you want the footnote?

MR. CURTNER: Yes, we would, your Honor.

MR. CALDWELL: Would you like to see it before you decide?

MR. CURTNER: I just want to know what [1310] it says.

Q. (By Mr. Caldwell) Read the footnote, please Mr. Lamson.

A. The footnote reads, "Pupils from Sampson will enroll at Chadsey in 9B in September 1964 and will continue through Chadsey. Sampson's 8B's will enroll in Webber and continue through Webber and Northwestern."

MR. CALDWELL: Plaintiff's Exhibit 79, your Honor, shows that Webber Junior High was opened in 1963 with an enrollment of 456 and in that year it was 99.4 per cent black.

In the year 1964-65, Plaintiff's Exhibit 80 reflects that the remaining schools in the Chadsey area, Clippert was 46 under capacity, Hanneman was 61 under capacity, O. W. Holmes was 426

under capacity, Logan was 69 under capacity, Priest was 210 under capacity and Sherrill was 91 over capacity.

Chadsey that year, 1964-65 was 17 over capacity, Northwestern was 705 over capacity, Sampson was 48 over capacity and Webber Junior High was 64 over capacity.

Q. (By Mr. Caldwell) Referring you now, Mr. Lamson, to Plaintiff's Exhibit 136-C which is the 1970 census map and on that map is a small overlay marked Plaintiff's Exihibit 109-N. I would ask you if you prepared the small overlay?

A. Yes, I did.

[1311] Q. What does it show, please, and what was the source?

A. The source was a number of the boundary books. It represents the change in the boundaries of Jackson Junior High area.

MR. CURTNER: Excuse me, did you say N or M?

MR. CALDWELL: N.

MR. CURTNER: As in Norman?

THE COURT: Like in Nanette.

Q. (By Mr. Caldwell) What is the red line in the Jackson Junior High area, what does it represent?

A. It represents, according to the boundary guide book, in 1964-65 reduction in the Jackson Junior High zone to exclude the Stellwagen and Clark Schools.

Q. What does the yellow line represent?

A. The yellow line represnts a subsequent reduction in the Jackson Junior High area to exclude the Keating School.

MR. CALDWELL: Your Honor, I would offer Plaintiff's Exhibit 109-N. Any objection?

MR. CURTNER: We have no objection to the exhibit, you Honor. I may have some objection to the characterization of what the lines represent.

THE COURT: You may cross examine on it. It is received.

Q. (By Mr. Caldwell) Would you outline for the Court, please, [1312] the Jackson Junior High boundary from 1959 through 1963-64.

A. Jackson Junior High boundary in the period you described, according to the boundary guide books, is this heavy black line. It is represented by this heavy black line.

(Indicating on the map.)

Q. What elementary schools were included in that area in that feeder pattern?

A. That included the Stellwagen, the Clark, the Hamilton, the Hosmer, Carstens, Ives, Guyton. I don't believe this represents the situation relative to Keating. I think Keating came later. I don't believe that happened before '64-65.

Q. Would you like to refer to Plaintiff's Exhibit 78-E which is a 1963-64 boundard guide book.

A. I was wrong about that. It does involve also the Keating School.

Q. Was a change made in the 1964-65 school year?

A. Yes, it was, as represented by the red line passing down the Outer Drive-Alter Road area.

Q. What was that change? What elementary schools does it affect?

A. It affected the Stellwagen and Clark Schools and the change was that the eastern boundary or actually the northeastern boundary was moved from Whittier-Outer Drive-Warren and Cadieux to the Warren-Outer Drive boundary represented in red.

MR. CALDWELL: In that year, your Honor, [1313] Clark was .2 per cent black and Stellwagen was .5 per cent black. The Jackson Junior High itself was 20.3 per cent black.

MR. CURTNER: What year?

MR. CALDWELL: 1964-65

MR. CURTNER: All right.

Q. (By Mr. Caldwell) How long did that boundary for the Jackson Junior High continue?

A. According to the boundary guide books until the present time.

Q. With regard to the Keating change that you mentioned, when did that occur?

A. I am not sure. Could I check the boundary guide book or my overlay, either one?

(Handing the witness a book.)

A. According to Plaintiff's Exhibit 78-J, the change involving the Keating School came about in 1968-1969 school year.

Q. What was that change?

A. The change is represented by this yellow line and was to remove the Keating School from the feeder pattern of Jackson Junior High.

MR. CALDWELL: In the 1968-69 year Jackson had 49.3 percent black according to Plaintiff's Exhibit 128-B.

Q. (By Mr. Caldwell) Let me ask you what feeder pattern was Keating placed in?

A. Foch Junior High.

[1314] MR. CALDWELL: Foch Junior High was 89.6 per cent black, Carstens was 19.6 percent black, Ives was 2.6 per cent black, Guyton was 11.6 per cent black.

Q. (By Mr. Caldwell) Would you point out those three schools?

A. Go through them again, please.

Q. Carstens.

A. Carstens in here. (Indicating)

Q. Ives.

A. Ives. (Indicating.)

Q. And Guyton.

A. Guyton. (Indicating.)

MR. CALDWELL: Back again to Plaintiff's Exhibit 128-B, Keating that year was 88.0 per cent black.

Q. (By Mr. Caldwell) Was another school introduced into that area in 1969-70?

A. Yes, the Stark School partially covered by the yellow line just to the west of this corner. (Indicating.)

MR. CALDWELL: Plaintiff's Exhibit 79, your Honor, reveals that the Stark Elementary School opened in 1969 with an enrollment of 822, that it was 98.4 per cent black that year.

Q. (By Mr. Caldwell.) When the Stark School opened what was its feeder pattern with regard to junior high?

A. Can I check the boundary guide book for that year?

[1314-A] Q. Yes.

(Handing the witness a book.)

A. I can't find it.

[1315] Q. (By Mr. Caldwell) Would you look at Plaintiffs' Exhibit 100-I, which is the 1969-70 racial count? On page 66, does it state what the feeder pattern for junior high is indicated with regard to the Stark School?

A. According to Plaintiffs' Exhibit 100-I, the feeder pattern indicates that the Stark School attends the Foch Junior High School.

Q. In that year how many black students does that exhibit reveal were in the Stark School?

A. 809.

Q. What was the total enrollment of that school?

A. 822.

Q. Would you step to Plaintiffs' Exhibit 2, please? Would you point out, please, the Parkman Elmenetary School?

A. Here.

Q. And would you circumscribe its boundaries with the pointer, please?

A. It is bounded by the high school boundary, Cody High School boundary on the north, east and south sides, and then it is bounded by its own boundary to the west here. It essentially represents that square.

Q. What percent black does the data tag indicate the Parkman School is this year?

A. The data tag indicates that the Parkman School is 12.8 percent [1316] black.

Q. Prior to 1968-69 in what high school feeder pattern was the Parkman Elementary School?

A. According to the overlays I prepared there from the boundary book the Parkman School was formerly in the Mackenzie High School feeder pattern.

Q. Was a change made in that in 1968-69?

A. Yes, it was.

Q. And what was that change?

A. The Parkman School was moved from the Mackenzie High School feeder pattern and included in the Cody High School feeder pattern.

Q. As reflected by Plaintiffs' Exhibit 2, what is the racial composition of the area bounded by the Parkman Elementary boundaries?

A. It is white, that being 0 to 5 percent non-white.

Q. Is that the only white area in '68-69, what prior to that time was the Mackenzie High School area?

A. Yes, according to this 1970 census map.

Q. What is the racial composition of the Mackenzie area as reflected by Plaintiffs' Exhibit 2?

MR. CURTNER: Your Honor, I think that we should be careful in pointing out that when Mr. Caldwell says area, he means the general population of the area and [1317] not school population.

MR. CALDWELL: That's correct.

A. The general population of the area as reflected by the 1970 census map – the area you are speaking of is bounded by the red line I'm tracing with this straightedge – that area is approximately 50 percent red, red being 85 to 100 percent non-white, approximately a quarter orange, orange being 50-85 percent non-white, and a large portion of blue in the northwest and west, that being 25 to 50 percent non-white, and a small portion in the southwest corner of green, green being 5 to 25 percent non-white.

Q. (By Mr. Caldwell) And what does Exhibit 2 reflect the racial composition is of the Cody High School area?

A. The racial composition of the Cody High School area, that area being indicated by this straightedge –

Q. This is prior to '68-69 now.

A. It is primarily white, white being 0 to 5 percent non-white, with a small section including the Herman Gardens Project being blue, blue being 25 to 50 percent non-white.

Q. And where does the Parkman Elementary School go to high school this current year?

A. This current year it attends Cody High School.

MR. CALDWELL: Your Honor, Plaintiffs' Exhibit 128-B reflects that in the current school year Parkman [1318] Elementary School is 7.8 percent black, while Mackenzie Senior High School is 91.7 percent black, and Cody Senior High School is 2.5 percent black.

MR. KRASICKY: What exhibit are you reading from?

MR. CALDWELL: Plaintiffs' Exhibit 128-B, which is the 1969-70 racial composition of the schools.

MR. CURTNER: For which year?

MR. CALDWELL: The current school year, 1969-70. I'm sorry. I did say the current school year, but I was reading the 1969-70 data.

MR. CURTNER: You were referring to Parkman as of the current school year.

MR. CALDWELL: I misstated myself. I was referring to Parkman as of the 1969-70 school year.

Q. (By Mr. Caldwell) Referring to the high school overlay, Mr. Lamson, would you state the racial composition as reflected by the data tags for the current, 1970-71 school year?

A. Relative to all the schools in both constellations?

Q. Relative to just the two high schools, Mackenzie and Cody.

A. According to the data tags the Cody High School is 4.0 percent black, and the Mackenzie High School is 96.8 percent black.

Q. Would you point to the Herman Elementary School?

[1319] A. Right to the bottom of this blue portion.

Q. What is the racial composition of the area with regard to population as reflected by Plaintiffs' Exhibit 2?

A. The area immediately to the north is blue, that being 25 to 50 percent non-white, and immediately south and any other place in the area is white, that being 0 to 5 percent non-white.

Q. What does the data tag reflect the current racial composition of the Herman School to be?

A. The Herman School is indicated on the data tag to be 58.5 percent black.

Q. What does the data tag reflect the racial composition of the Parker School to be?

A. The Parker School in the Mackenzie constellation is reflected as 79.4 percent black.

MR. CALDWELL: Plaintiffs' Exhibit 63, your Honor, reflects that as of 1970-71 youngsters were being transported from the Parker Elementary School to the Herman Elementary School.

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[1339] GORDON FOSTER was thereupon called as a witness on behalf of the Plaintiffs and, being first duly sworn, was examined and testified as follows:

THE COURT: And your full name, sir?

THE WITNESS: Gordon Foster.

THE COURT: You may be seated.

THE WITNESS: Thank you.

[1340] DIRECT EXAMINATION BY MR. LUCAS:

Q. Dr. Foster, where do you live?

A. 430 Miller Road, Coral Gables, Florida.

Q. Where are you employed, sir?

A. The University of Miami, which is also in Coral Gables.

Q. What position do you hold with the University?

A. I hold the position of associate professor in education.

Q. Do you hold any other positions in connection with the University or by contract?

A. Technically no, except that my time is assigned to other than teaching matters, if that is what you mean.

Q All right, sir. Could you give us that assignment?

A. Currently, I'm director of the Florida School Desegregation Consulting Center, which is a federally-funded center under Title 4 of the Civil Rights Act.

Q. Is that the Civil Rights Act of 1964?

A. That's correct.

Q. What are the responsibilities assigned to the Center in that Act?

A. The Center essentially is involved in two major activities, according to the 1964 Act. One comes under Section 403, which has to do with providing technical assistance to school districts in the State of Florida who so request.

[1341] Q. What do you mean by technical assistance?

A. Technical assistance on all matters relating to problems generated by school desegregation. We prefer to call them opportunities, rather than problems, but the law reads problems. The second part of the program under which we are funded in Section 404, which has to do with establishing institutes, workshops, things of this nature, in service activities largely with professional school personnel, again upon request, and concerning problems related to the school desegregation process.

Q. Dr. Foster, do you have any other responsibilities, particularly with respect to graduate education of school administrators?

A. I'm chairman of what amounts to our Department of Educational Administration, which has to do with preparing school administrators at the Masters and six-year specialist degree and doctorate levels. Also for the past two years – I'm not currently, but I have been Director of the federally-funded program under the Higher Education Act to prepare administrators for leadership positions in desegregated schools, primarily the South, Southeast, but also to some extent clear around the country.

Q. What type of preparation does this involve, Dr. Foster?

A. It involves a rather intensive experience-oriented preparation of people that are selected from the entire country, [1342] biracially obviously, with a heavy emphasis on preparation of black administrators.

Q. Dr. Foster, would you give your education background?

A. I have a Bachelor of Arts degree from Oberlin College in Oberlin, Ohio, a Master of Education degree from Miami University in Oxford, Ohio, with emphasis on administration, a Doctor of Philosophy degree from Ohio State University in Columbus, again with emphasis on educational administration.

Q. Dr. Foster, referring to your previous professional experience, can you tell us what other positions you have held aside from the ones you have already mentioned?

A. I have been employed as an elementary and secondary teacher, as elementary and secondary administrator. I have been employed for a brief period on assignment to the Cincinnati Public Schools as a research – I don't remember the exact title, but I guess research assistant or something in the central office. I have been director of four programs under the Elementary and Secondary Educational Act in Southwestern Ohio having to do with cooperative research between and among school districts and universities in Southwestern Ohio. I have been employed by Miami University in Oxford, Ohio, by the Ohio State University, by the University of Miami in Florida to teach primarily in the area of school administration.

Q. Would you give us your graduate level teaching experience, [1343] Dr. Foster, with particular emphasis on the types of courses?

A. I have taught in the three schools I mentioned such courses as the general principles or basic principles of educational administration, courses on how to perform successfully as an elementary principal or secondary principal, school buildings, school maintenance, this sort of area.

[1344] Q. You say school buildings, are you referring to construction, Doctor?

A. This would come under a course in school buildings, yes, general planning, site selection, this sort of thing.

I have taught courses in school community relations and another course we call a task area course. I taught courses in school building surveys which is more of a practical type approach to problems of school construction in which students traditionally go out and work with the schools and problems of site selection, district reorganization, this sort of thing.

I have also taught some courses at Miami in Flordia in the field of junior college education.

Q. Doctor Foster, could you give us some of your publications and research papers, please?

A. Well, when I was a doctoral student at Ohio State University I worked as a junior author under John Ramseyer on several publications for the American Association of School Administrators. I can't remember the exact title of them. One was a brochure for the Committee on Advancement of School Administration call, "The Case for the Residency" and another one was a survey which the AASA did on preparation programs about 1965 of superintendents in all universities in the country.

[1345] I had a short article in the Saturday Review of Literature around 1962 or '3, I believe. I published chapters in school law books, particularly in a book called The Ohio School Law edited by Robert Simpson, and published by W.H. Anderson Company in Cincinnati.

Q. When was that, sir?

A. That was, I believe, in 1967 and it has been reprinted within the last year with a supplement. I published actually the results of speeches at the National Organization for Legal Problems in Education in conventions in their two yearbooks, speeches I made at the conventions, and a whole series of what we call pot-boiler materials, basically school surveys, desegregation studies, this sort of thing which really aren't counted in academic circles as hard publications.

Q. You mentioned your position as a consultant with regard to the ten Ohio school district studies. Have you held or had any other consultant activity?

A. I have worked individually in various consulting jobs in several states to do with different aspects of education, I also spent two or three years working with an organization in Pennsylvania known as Educational – I can't remember the exact name – Associated Educational Consultants – out of Pittsburgh, Pennsylvania and while I was working with them I think I worked on something like twenty or twenty-five what [1346] is called master plans in the State of Pennsylvania for different districts.

Q. What occasioned that particular series of studies, Doctor Foster?

A. A school district reorganization statute in the State of Pennsylvania which required all school districts to prepare ten year master plans and present them to the State Department for approval.

Q. This included construction plans, expansion, closing of schools, this sort of thing?

A. Yes, but the particular thing I was generally associated with had to do with democratic studies of the communities involved and we did do some work with the architect who was primarily in charge of the sort of area you are discussing.

Q. As part of your duties with the Center, have you directed desegregation plan studies in Florida?

A. Yes, I have.

Q. Will you give us some of those plans, please?

A. Some of the districts?

Q. Yes.

A. I can't exactly remember which ones were directed and which ones I participated in but as Director of the Center I took the responsibility for direction of plans in Duval County which is Jacksonville.

[1347] Q. Was that by order of the court?

A. By court order, yes, sir.

Q. Did the court order you or the school district to consult the Center?

A. The court ordered the school district to seek our assistance. Dade County, Florida, which is Miami, Broward County, Florida, which is Fort Launderdale, Pompano Beach, that area north of Miami; Palm Beach county which is Palm Beach. Let's see. Brevard County which is the moon-shot county, Volusia County which is Datona Beach, Escambia County which is Pensacola. Every county, as a matter of fact, which was under court order in Florida in the last three years with one or two exceptions of smaller counties, our Center was asked by the counties through court order to make desegregation plans for

nem. So, there are a host of smaller counties such as Manatee, ay, some of these I haven't mentioned.

Q. Doctor Foster, have you served as an expert witness in ther school cases on school matters in general or in preparation f plans for the United States?

A. Yes, I have.

Q. Can you give us some examples of that, please?

A. I served as a expert witness and consultant for the Justice Department in the Pasadena, California case. I served as an expert witness and consultant for the Justice Department n [1348] Norfolk, Virginia case. I believe that is all for the Justice Department.

Q. What about Houston?

A. Yes, of course. I did not serve as an expert in the Houston case but I assisted Doctor Michael Stoley who was the government's main witness in the Houston case in the preparation of the Houston desegregation plan which he presented.

Q. In these matters were you retained as a private expert by the government or were you retained as part of your duties in the Center?

A. I was employed as a private consultant by the Justice Department.

Q. Have you served as an expert witness in similar matters for private plaintiffs in school cases and, if so, where?

A. I was employed by the United Steel Workers to work as an expert witness and consultant in the Corpus Christi, Texas case, Cisneros versus Corpus Christi. I was employed by the Legal Defense Fund to serve as a consultant and expert witness in the Richmond, Virginia case, in the Memphis, Tennessee Case. I have worked in Marshall County, Mississippi and I believe Humphries County, Mississippi as a witness for the Legal Defense Fund and in Caroline County, Virginia and also in Opelousas, Louisiana for a Washington Organization connected with the Catholic Schools. I can't think of the name of it. [1349] This was a Catholic school desegregation case in Opelousas.

Q. Doctor Foster, in the Marshall County and Humphries County cases, were you qualified there as an expert in connection with the use of test schools for the assignment of pupils in a desegregation plan?

A. Yes, I was.

Q. Can you just briefly list a few of your professional organizations of which you are a member?

A. I am a member of the Council of Educational Facility Planners, CDFP, a member of the American Association of School Administrators, the ASA; the National Association of Secondary School Principals, the National Association of Elementary School Principals, I am a member of the Board of Directors of the Southern Education Foundation. I am a member of Phi Delta Kappa, a member of the National Organization on Legal Problems in Education which is known as NOLPE.

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[1380] . . .

A. Broadly I would define a segregated school as one which is perceived by the community to be segregated. I think this is one type of definition. I think there are some technical definitions which would enter in terms of, you know, court orders and HEW requirements and this sort of thing having to do with what is a unitary system or what is a dual system. I will go into that if you like.

[1381] Q. Your definition is that a school district that is perceived by the community to be segregated, is that right?

A. I think any school that is perceived by the community to be segregated is in fact segregated.

THE COURT: Well, I think the question is more direct than that, Doctor. I think counsel wants to know what you consider a segregated school system, not what the community does. What do you consider it, based on your experience and expertise, what do you consider a segregated school system to be?

A. Well, any system which has schools in it which are racially identifiable.

Q. A system with one school that is racially identifiable whould be a segregated system under your definition, is that correct?

A. I believe so, yes.

Q. What according to you, is a racially identifiable school?

A. I think this would vary perhaps from system to system and from circumstance to circumstance.

Q. What do you conceive a racially identifiable school to be?

A. I don't think you can isolate this in terms of generalization. I think you have to take a city like Jacksonville and say in Jacksonville a segregated school or, in turn, a segregated system is such-and-such. I don't think you can make this [1382] generalization across the country.

Q. Well –

A. (Continuing) But, generally, it would be a system in which the pattern of half a dozen things such as teacher assignment, pupil assignment, construction, transportatation, non-certificated personnel assignment, all of these things follow non-discriminatory patterns and the assignment of teachers and pupils, praticularly tended to be non-racially identifiable, if you follow me.

Q. I really don't follow you, Dr. Foster. Are you telling us that a school could be considered racially identifiable in Jacksonville according to certain criteria, but perhaps not so in Detroit using the same criteria, or do you use different criteria in Detroit?

A. I think I said each city is a problem unto itself or each school system is a problem unto itself, and in some systems if you are in a rural system, for example, where you may have three or four schools, it would seem to me in terms of pupil assignment that you would have to approach a reasonably close proximity to racial balance to have a desegregated system. Basically, my definition of a segregated system is one in which the assignment of pupils would be so far out of line in any particular school with a total ratio as a whole in a system that a school would tend to be racially identifiable.

[1383] Q. With respect to faculty in a segregated system, what is your definition?

A. With respect to faculty my definition would be, well, it's quite clear. If you remember in the South, for example, the Court has said what a racially identifiable system is an I agree.

Q. Let me pose a hypothetical, Dr. Foster. For example, an adult population of a city is approximately 40 percent black, 60 percent white, the adult population – teachers in the school system in that same city are approximately 40 percent black, 60 percent white. Now, outside of the question of assignment, would that indicate to you that there is segregation in faculty in that school in that city?

A. Did you say the adult population was 40 percent –

Q. The adult population was 40 percent black and 60 percent white, and the teachers 40 percent black and 60 percent white.

MR. LUCAS: Are you talking about a system or a school?

MR. HELVESTON: First a city with an adult population of 40 percent black and 60 percent white, then the system, school system within that city or boundary or county would be the same proportion.

A. What is the specific question?

Q. The question is, would this indicate to you that it is a [1384] segregated system with respect to the faculty?

A. Well, I think assignment has to be part of that picture but in terms of employment it would appear no.

Q. One further question: do you know, Dr. Foster, if the school districts that you worked with in Florida were dual systems or unitary systems prior to the time you began working with them? In other words, in a single school system were there separate schools operated by the government on the basis of race, separated on the basis of race –

MR. LUCAS: When you define "government" do you mean the school officials or do you mean someone else?

Q. Whatever you perceive to be government, state government, what-have-you, county government?

A. Well, I think the question you ask is difficult to answer because the courts themselves on some occasions – we were asked through the school system by the court in one case to prepare a

plan which effectuated a unitary system and in the same order the court said it was already a unitary system so it becomes a little difficult, you see. I guess the answer to your question, I have dealt with what I would call dual systems and also with unitary systems.

Q. The majority were which, dual systems, unitary systems?

A. It's in a state of process from dual system to unitary systems and the concept of what is a unitary system, I think, has [1385] changed over the last three or four years.

THE COURT: I think what counsel has been getting at, originally in time well past did Florida generally have a separate and equal system of schools for the different races?

A. Very definitely.

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[1389] GORDON FOSTER resumed the stand on behalf of the Plaintiffs, and having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued.) BY MR. LUCAS:

Q. Doctor Foster, what information have you studied from the Detroit School System in order to prepare yourself for the testimony here today?

[1390] A. I studied the maps that Mr. Lamson has made, the overlays of different attendance areas, senior high, junior high and elementary. I have studied the census maps. I have studied the optional zone overlays. I studied some of the zone boundary overlays that I believe have been admitted into evidence.

I have tried to keep up with most of the court proceedings, testimony. I studied depositions from Superintendent Drachler and Mr. Henrickson. I believe the latter had a total of three or four different depositions at different times. I studied depositons from other persons including the eight district superintendents. I have looked at the report, the findings of the 1962 Citizens Advisory Committee on Equal Education Opportunities. I have looked at the official proceedings or the minutes of this body in their different meetings of business and some of the materials that were presented to them.

I studied a high school, I am not sure of the exact title – a commission report of 1968. There were probably some other things.

Q. Did you examine the boundary guide books which were the basis for Mr. Lamson's maps as well, Doctor Foster?

A. Yes, I believe that is Plaintiff's Exhibit 78 and I also studied the student enrollment figures which make up the [1391] various plaintiff exhibits having to do with enrollment data from 1960 to 1970.

Q. That would be the racial counts?

A. Yes, sir.

Q. Did you also examine the achievement data and exhibits prepared from them?

A. Yes, I have.

Q. Have you made any actual physical surveys of any schools in the Detroit School System?

A. No, I have not.

Q. Were you asked to make any surveys?

A. No, I wasn't.

[1392] Q. Dr. Foster, in your experience can you give us some of the basic techniques utilized by school systems in order to establish and maintain or perpetuate segregation?

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A. Well, there are several ways in which school authorities manage to maintain purposeful segregation, and I use the word purposeful because it has been used before, and I think it has an important adjectival meaning. It was used, for [1393] example, in the Citizens Committee in '62 in its report to the Detroit Board –

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[1396] . . .

You may proceed. The objection is overruled.

A. (Continuing) In addition to the Detroit Committee using this term it was also used by the U.S. Civil Rights Commission in its racial isolation study in the public schools in 1967.

As I said, I think it has special connotation because it indicates that actions of school authorities have resulted and that if they don't act in a neutral way the decisions they make and the actions they take tend to further racial isolation or to lessen it and they tend to increase containment of minority groups, or to decrease it, and, generally, to increase integration or to decrease integration. I think generally what we are interested in studying this sort of thing is what the results are of actions.

The first method or technique I might cite that is used to maintain segregation would be the use of optional zones.

Would it be possible for me to step to the board to illustrate?

[1397] Q. Please do.

(The witness proceeded to the blackboard.)

A. Optional zones are sometimes also referred to as dual zones or dual overlapping zones. I think it will be easier for me to illustrate this briefly.

(The witness drew a sketch on the board.)

A. If you have, let's say, two high school districts, District X and District Y, frequently when you set up an optional zone you carve the zone out of one district, occasionally two, but assume we carve it out of District Y and the children in this optional zone are then permitted to go to either high school X or high school Y, this becomes in a sense an overlapping zone because if we refer to the boundaries of school District X at this point it not only includes the previous boundary but also takes in the optional zone.

District Y in turn would include its previous boundaries, also including the optional zone. I think this may explain the origin of the connotation of the word "overlapping".

Essentially optional zones are set up for two or three reasons, one is to allow white students or black students the option of attending one of the two attendance areas which make up the boundaries of the zone and another is for, occasionally for religious purposes to provide alternatives [1398] for persons of different religions. Sometimes these are set up for socio-economic reasons and I have on occasion seen them set up by boards or superintendents as political gimicks in order to help pass a bond issue or one thing or another or a school board or superintendent

will set up temporary optional zones as a favor to certain constituents in return for assistance in helping the school board with one thing or another.

I think in the frame work in which we operate they are used primarily for maintaining segregated patterns.

A second method or way in which segregation is maintained would be through the use of changing zone lines or manipulating zone lines. In its grossest form this would be called gerrymandering but many times school authorities will move small areas of one attendance zone into another. I think as school attendance officers in the spring set out to establish attendance areas for the next fall they have to have this sort of maneuverability in order to allow for proper use of utilization of buildings in order to allow for changing student populations, and so it is almost essential they have some freedom within which to change zones according to the needs of the district.

A third – well, as far as the zone changing [1399] operation I might cite another technique which I think falls under this roughly and that is the feeder pattern business because essentially when you change feeder patterns you are changing zone boundaries, so that if you have a feeder pattern set up in which certain high schools or junior high schools are fed into a particular senior high school and that pattern is changed then the boundaries, the zone boundaries for the high school need to be changed also to make for this change. I would say that feeder pattern change falls under zone changing.

A third category or method used to maintain segregation would be the use of transportation or bussing. One example of this would be the transportation of black children from a predominantly black school to another school in which their entire class or groups of classes was or were kept intact when they went to the receiving school. This is referred to, I believe as "intact bussing."

Another example –

Q. (Interposing) Doctor, we may be a little technical there. When you say "intact bussing", are you referring to keeping the children in a contained classroom?

A. Yes.

Q. Will you give us an example?

A. In the receiving school instead of being dispersed in the [1400] general population of the school their classroom and teachers would be assigned to a particular classroom and they would be kept as a unit in the receiving school.

Q. I see.

A. Another example of the use of bussing would be to bus children of one race to a school of the same race past the schools that have capacity of the opposite race. There are many other examples in transportation practices of segregation but I think these two are the major uses of transportation for segregation purposes.

A fourth method would be the use of transfer policies to maintain segregation. Once a system sets up an organized arrangement of attendance areas it is very important that their transfer policies be such that the original attendance areas are not violated willy-nilly as they so often are in many systems.

One technique that would fall under transfers, generally, I believe would be enrollment. If you set up an attendance area system and assign children to it and then have a policy of open enrollment for under-capacity schools this in effect violates what you are trying to do to begin with because unless you restrict it in some way what it amounts to is freedom of choice as far as the attendance goes.

[1401] Q. Can't such a technique result in the availability to black students of an option to transfer out of an all black or predominantly all black school or to a previously all white school?

A. Yes, it can but experience proves largely it doesn't operate that way.

Q. You mean doesn't operate in the sense no black child exercises the option?

A. I think many black children would exercise the option, but not in any large numbers.

Q. What in your experience, Doctor, is the practice with respect to white children under an open enrollment policy? Do white children use black schools?

A. Not that I am aware of.

Q. What happens to white children who are in minority in a particular school, that is to say, maybe 20 per cent of the population of the school is white and the rest being black?

A. In most instances it has been my experience that the white use this as an escape valve to go to the school in which they are the predominant race.

Q. You spoke of this in terms of open enrollment, would this also be the same thing as transfers as sometimes used instead of the term "open enrollment" – free transfer?

A. Yes. It seems to me it is very important that a school system [1402] set up a rather rigid policing system for its attendance area operation and it is very important how children and the public at large perceive the school's stance in this because in some districts the public perceives it as being a rather loose situation in which children can transfer rather freely by falsifying addresses and moving in with relatives and this sort of thing. So it is very important, I think, once you set up an attendance area assignment or arrangement that the schools exercise every caution to see that it is followed and that it works.

Q. Doctor Foster, are there administrative devices under the concept of an open enrollment or transfer which can provide that desegregating effect that is the opportunity for black children to get out of a racially separate situation into an integrated school?

A. Yes. If you put in an operational clause in your policy which in effect would be what we call a majority-to-minority transfer arrangement, this would safeguard this device being used only for desegregation purposes.

Q. Does that – go ahead.

A. I was going on with another thing.

Q. Does that particular device in your experience with desegregation plans, Doctor Foster, provide for a substantial [1403] disestablishment of racial separation in schools?

A. The results – -

MR. BUSHNELL: If the Court please, that is a leading question.

THE COURT: It is. Avoid leading as much as you can.

MR. LUCAS: I will try.

A. I think the results.

Q. (By Mr. Lucas) Let me rephrase that, Doctor, just to be technical about it. In your experience, Doctor, what has been the effect of the use of even this minority transfer provision?

A. In my experience the effect has been zero as far as white children transferring to predominantly black schools. On the other end there have been for periods of time school systems in which the blacks operated to transfer to majority white schools and in many instances, never in large numbers, but where they did in many instances after a brief experience they would return to the school in which they were the majority for one reason or another.

Q. Are there other administrative techniques you have identified, Doctor?

A. Yes. I think a fifth one would be the use of grade patterns or grade organization patterns. For example, a typical school [1404] system would have an organizational structure of K thorugh 6, 7 through 9, and 10 through 12. Frequently in a large system – what would I call it – the buffer grades between these three levels, in this case I just mentioned grades 6 and 7 or to some extent grade 9 would be used as what we call swing grades. That is to say in any given school K to grade 6 might be transferred to junior high for certain reasons or grade 7 might be transferred back to the elementary school for certain reasons and very typically a system that has a certain organizational structure but was then violated in almost half or more of the schools I examined. I think the use of the so-called swing grades is certainly a legitimate exercise on the part of administrative authorities because they have to, again, have to have some maneuverability in terms of pupil assignment to take care of capacity problems and shift population problems. It simply becomes a question of whether this device is used to promote further segregation and I think in many cases it is.

[1405] Q. What about school construction, Doctor?

A. Well, a final general category of methods in which segregation and isolation are maintained would be the total area of school

construction, and this includes quite a few corollary operations, such as I think one of the most important ones at the moment is site selection, the size of site. At this day and age in selecting a site it is obviously very important to consider what effect it will have on segregation now and in the future. The closing down of schools would be a part of the general operation. The size of school that you build would also be involved. Another operation as part of this used by some systems is the use of portables in one way or the other.

Q. Dr. Foster, how does the size of the school which is built affect the containment or segregation of students?

A. Many times you find that minority groups in order to further contain or isolate are housed in what we might call out-sized – that is to say typically in a particular system you would have elementary schools which would average 600 to 800 pupils, and then you will come along and find an all-black school which has 1800 to 2,000 pupils. This I think is an example.

Q. What about the converse, Doctor, where a school is deliberately kept to a smaller than average size? How does that affect segregation?

[1406] A. I think most frequently the small sized school affects segregation unfavorably by the use of small primary units or elementary units to maintain a close, walk-in type neighborhood school pattern. I didn't mention in the use of grade structure or grade organization the fact that in many systems you will find a differential between minority group schools and majority group schools in the way they are organized. For example, in some cities the all-black or predominantly black schools will be classified or grouped as K through 12 schools, or in Jacksonville, for example, the secondary schools, the black schools are all 7 through 12, where the white schools are 10 through 12 or 9 through 12. So, quite often you will find differential organizational structures according to race.

Q. Dr. Foster, have you made a study and analysis of optional zones in the Detroit school system?

A. Yes, I have.

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[1407] . . .

Q. (By Mr. Lucas) Would you step to the map, Dr. Foster? Doctor, directing your attention to Plaintiffs' Exhibit 109-A, which is the 1959 high school overlay, and the underlying exhibit, Plaintiffs' Exhibit 136-B, the 1960 census data, would you examine the Mackenzie-Central option and explain to us what that option is and how it operates from the information that has been made available?

A. The Mackenzie-Central option involved an optional zone which included basically the areas of Winter —— may I refer to my notes?

Q. Yes.

MR. BUSHNELL: I would repeat my standing objection, if the Court please, for the sake of the record. I have a continuing objection.

THE COURT: So understood.

A. The Central-Mackenzie optional arrangement included the Winter —— I believe the McKerrow and the Winterhalter elementary [1408] areas west of Petoskey Avenue, which is the street running to the eastern end of the optional zone boundary. This allowed students in this area to attend either Mackenzie or Central at the senior high level.

Q. (By Mr. Lucas, continuing) Dr. Foster, have you examined plaintiffs' Exhibit 136-A?

A. Yes, I have.

Q. That is the 1959 census data. In 1950 from the examination of the map can you say whether or not the Central and Mackenzie areas were 0 to 4.9 percent non-white?

MR. BUSHNELL: Leading.

THE COURT: Yes. Why don't you ask the witness to tell us.

MR. LUCAS: All right, sir.

Q. (By Mr. Lucas) Can you tell us what the percentage of non-white was in Mackenzie and Central at that time, sir?

A. The Mackenzie area was on the census map of 1950 white, which indicates it was between 0 and 5 percent non-white except

for a small section of Central in the southeast sector which was green -- I don't believe the map is on quite tight. One or two other sections may have a little blue or orange. But, basically Central attendance area was also white, indicating 0 to 5 percent non-white census population.

Q. Examining the optional area, Dr. Foster, what was the percent [1409] non-white in that area?

A. The percent non-white in the optional area was indicated on the census map as the color white, which would indicate a 0 to 5 percent non-white population.

Q. Dr. Foster, from the information furnished you, do you know whether or not the optional attendance zone shown on 109-A first came into existence in 1959?

A. It is my understanding from looking at all the data –

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[1412] . . .

Q. (By Mr. Lucas) Dr. Foster, let me rephrase my question, sir. Do you know whether or not the optional attendance are that you are discussing between Macknezie and Central first appeared in 1959?

MR. BUSHNELL: Objection. Again, "Do you know?" It is on the basis of the information that has been provided. What the information shows, this witness by his own testimony does not know of his own knowledge.

THE COURT: He has to base it on the information supplied him. That is obvious.

According to your information gathered [1413] from the sources indicated, either exhibits or the clarifications added by Mr. Henrickson, when did that zoning take place?

A. From these data my understanding is several years prior to 1959. But, no exact date has been established.

THE COURT: All right, proceed.

Q. (By Mr. Lucas) Dr. Foster, what was the enrollment at Mackenzie in 1960?

A. The enrollment at Mackenzie in 1960 was 2,799 students.

Q. And at Central?

A. At Central 2,308 students.

Q. And what was the percent black at Mackenzie?

A. The percent black at Mackenzie was 12.2 percent in 1960.

Q. Dr. Foster, in referring to particular schools wherever you can, would you just point them out? It is a little difficult perhaps for Court and counsel to see where a particular school is located.

A. Mackenzie High School was 12.2 black in 1960.

Q. And Central?

A. Central High School was 97.2 percent black in 1960.

Q. Dr. Foster, in terms of those two schools was there a technique available for the desegregation of those two schools?

A. At what point in time?

A. In 1960.

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[1414] . . .

A. I think the school authorities could have desegregated the Central and Mackenzie High Schools by simply restructuring the attendance zone boundaries much as they did in their suggestions of April of last year for some of the high schools. Instead of running the patterns on a north and south basis, if the attendance zones could have cut across on an east and [1415] west basis, the lines, it appears to me, could have been drawn to equalize to a large extent the two populations, the white and black populations.

Q. (By Mr. Lucas) Dr. Foster, directing your attention to Plaintiffs' Exhibit 132, the portion of white and black students in each high school constellation represented in respective high schools, 1960, would you examine both Mackenzie and Central? Tell us how many black students there were in 1960 in the Mackenzie constellation.

A. In 1960 there were 6,547 black students in the Mackenzie constellation.

Q. And how many of these students actually attended Mackenzie High School?

A. That would be 341 out of the 6,547, constituting a percentage of 5.2.

Q. What was the percentage of high school attendance by

black students in the system at that time?

A. In 1960 the system percentage, system-wide percentage was 12.4 percent black students in high schools from black constellations.

Q. Is that approximately half then of the system percent that were in attendance at Mackenzie High School?

A. A little less than half.

Q. What about Central High School? What was the number of [1415-A] black students in the constellation, first of all?

A. In Central High School there were 11,682 blacks in the constellation.

[1416] Q. How many of those were in Central High School?

A. 2,245 were in Central High School at that time.

Q. What per cent was that?

A. This was a percentage of 19.2 as compared to the system's 12.4.

Q. Doctor Foster, do you have an opinion as to the administrative use of the optional attendance zone in 1960 between and prior to that in Mackenzie-Central area?

A. Yes. I think it was used primarily – you mean as to the purpose of it?

Q. Well, as to whether or not it had any administrative value that you know of, Doctor, aside from race?

A. In terms of assignment I can see no advantage to it.

Q. The capacities of the two schools, do you have the figures for those, Doctor?

A. Yes. Mackenzie in 1960 the capacity was 2,832 which means they had space for 33 more pupils. In Central the capacity in '60 was 2,021, meaning they had an overage of 277 pupils.

Q. Is that a substantial overcrowding factor in terms of administrators in a high school?

A. Not particularly, especially if we take the Detroit figure of 115 per cent which has some variation.

MR. BUSHNELL: If the Court please, that figure was not in effect in 1960.

[1417] MR. LUCAS: I don't think there is any indication that it was. It was a figure used by the system, I think it was in 1966, counsel, you can correct me if I am wrong.

MR. BUSHNELL: I believe it was, but it certainly was not in effect in 1960.

MR. LUCAS: I think the record will reflect the present figure is 125, your Honor.

THE COURT: Well, it is relevant.

MR. BUSHNELL: I didn't hear Mr. Lucas' last aside to the Court.

MR. LUCAS: I will be glad to restate it.

MR. BUSHNELL: I will ask the reporter to read it.

(The last statement of Mr. Lucas was read by the reporter.)

THE COURT: The statement may stand.

Q. (By Mr. Lucas) Doctor Foster, in terms of my first question in respect to any administrative reason for the use of such an optional zone –

A. I see no reason in terms of capacity, sir.

Q. Do you have an opinion as to its use in terms of segregation or desegregation, Doctor Foster?

A. In my opinion it was used as an optional zone to allow whites [1418] during the period it was in existence in the '50's and also until such time as it was done away with in 1962 to be assigned to predominantly white Mackenzie High School.

Q. Doctor Foster, from your examination of the 1950 census and in turn the 1960 census exhibits, do you have an opinion as to the effect of such an optional zone on the community, residence pattern in the community?

A. It would generally, in this sort of situation the residents of the Central High School zone would feel that or would be aware of very definitely, would feel that the existence of the optional zone allowing whites to go to Mackenzie –

MR. BUSHNELL: If the Court please, I will object to this witness testifying as to what nameless and unidentified individuals feel. If he has an opinion as to the effect of the question called for

I have no objection.

MR. LUCAS: I think that is what he was stating, your Honor. I think he can state it in a pure abstract.

THE COURT: It is his opinion of what happened.

MR. BUSHNELL: The effect, but his opinion as to what somebody might feel I do object to.

THE COURT: It is a matter of expression.

A. Community people and residents in a situation such as this [1419] generally have a perception that there is something wrong with their school, that the whites need an optional zone to get out into a less black situation and, therefore, this increases their perception of racial isolation and, in fact, physical containment.

Q. Does this have an effect, Doctor, in terms of the residence pattern? I believe you testified in 1950 the optional area was entirely white or zero to 4.9 per cent white.

MR. BUSHNELL: I will object to Doctor Foster testifying as to anything concerning residential patterns. I believe he was offered as a generalist expert on segregation, desegregation and there was a third item.

MR. LUCAS: Administration.

MR. BUSHNELL: Page 1357 of the transcript, Mr. Krasicky was speaking, "I understand education and school segregation plans?

"MR. LUCAS: School segregation was the other one, yes."

This exceeds the limit of the offer of expertise.

MR. LUCAS: Your Honor, we submit administrators take a look and he also testified about his experience with demographic studies quite extensively in the State of Pennsylvania. This is one of the functions of an administrator [1420] is to look at the people, where they live, where they go to school. I think it is within the general field of his expertise.

THE COURT: I agree with you, Mr. Lucas.

Q. (By Mr. Lucas) What effect, Doctor – do you have an opinion as to whether or not this has any effect on the residential patterns in such an optional area?

A. In my opinion this tends to increase the instability of the community because they generally feel this is an ad hoc temporary interim situation and it increases white flight in this sort of situation.

Q. Doctor Foster, directing your attention to the same exhibits, would you examine the Central-Northern High Schools and the optional zones which appears between them?

For that purpose let's put up the 1950 census tract.

(The 1950 census tract was placed on the board.)

Q. Would you, first of all, point out the two high schools and then the optional area?

A. This would be an option between the Central High School and the Northern High School. The optional area being Doty Elementary School.

Q. Doty Elementary zone, is that correct?

[1421] A. Yes.

Q. What was the population with respect to the census data of 1950 with respect to the Central area?

A. The Central area was largely white indicating a general population of between zero and 5 per cent non-white. The only exceptions being a small segment in the northeast corner of orange and a small segment of blue and green in the southeast corner.

Q. Northern High?

A. Northern was predominantly on the 1950 census map red and orange in its entire eastern portion with small patterns of white and green on the western portion indicating generally a population of 50 to 100 per cent black.

Q. Now, the Doty optional area, what does the map show with respect to it in 1950?

A. The Doty optional area which is located by the hatch marks between the two high school districts is a little more, I would say 50 per cent white in color. The southern part is green with a very small section of blue in the southwest corner indicating generally a non-white population of between zero and 50 per cent.

Q. Do you know whether or not the Doty optional area first

occurred in 1959?

A. It is my understanding from examining the data I mentioned [1422] earlier that the Doty optional area had been there for some time prior to 1959.

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[1427] ...

Q. (By Mr. Lucas) Doctor Foster, before I ask you the question, let me direct your attention to the 1960 map, 136-B and ask you to look again at the Doty optional area and tell me what the map reflects as to the population in that area?

A. I would say that the northeast sector, about a fourth of the total area or a little more than a fourth, is blue representing a total population of 25 to 50 per cent non-white. The balance of the Doty attendance area is orange representing a [1428] 50 to 85 per cent non-white population.

Q. Do you know what the pupil population of Doty is as it remains at this time in 1960?

A. The pupil population in '60 was 1,251 with a percent black of 95.8.

Q. Doctor Foster, do you have an opinion as to the effect of the operation of this optional attendance zone between Central and Northern?

A. My opinion is that it allowed the whites from the Doty optional area to choose to go to Central during the 1950's as long as the optional zone was in existence and until 1962 when the zone was dissolved – I beg your pardon, I believe it was dissolved in 1961.

Q. I believe I forgot to ask you, Doctor, with regard to the Mackenzie-Central optional area, how long did that continue?

A. The Mackenzie-Central optional zone continued until 1962.

Q. That would be the 1962-63 school year?

A. That is correct.

Q. Doctor Foster, directing your attention to the Northern-Northwestern optional attendance zone, can you locate them on the map and describe the areas, please?

A. The Northwestern-Northern optional zones – Northwestern is to the southeast, Northern is to the southwest. Northern is to the northeast and the optional area in between is made up [1428-A] of the Thirkell and Goldberg attendance areas.

[1429] Q. (by Mr. Lucas, continuing) Directing your attention to 136-A, can you describe the non-white population patterns in Northwestern and Northern?

A. According to the 1950 census map Northwestern was about 40 percent colored white, which would indicate 0 to 5 percent non-white. The southern and southeastern portion of the Northwestern attendance area included blue, green, orange and red areas in about equal proportions, indicating generally a population of 25 to 100 percent non-white in the southern-southeastern part of Northwestern. In Northern, the entire eastern two-thirds, northeastern two-thirds of the Northern sector were colored orange or red, indicating a population of 50 to 100 percent non-white. The western portion was colored about half white and half green, with some orange, indicating generally a non-white population of 0 to 25 percent.

Q. And the optional area of Thirkell and Goldberg Schools, can you describe the population there?

A. The census map indicates in 1950 that the optional area of Goldberg and Thirkell between the two high schools, on the eastern portion there was a white area, and on the extreme west a white area, representing almost half of this zone, which would be 0 to 5 percent non-white. The entire center section, except for a small blue patch at the north was green, indicating generally a population of non-whites from 5 to 50 [1430] percent.

THE COURT: 5 to 25, isn't it?

A. I beg your pardon. The green would represent to 25 percent.

Q. (By Mr. Lucas, continuing) Do you know the capacity of Northwestern and Northeastern in 1960 Doctor?

A. In 1960, Northwestern capacity was 2,118. The capacity of Northern High School was 2,090.

Q. Doctor, do you have an opinion as to the effect of the use of the optional area between Northwestern and Northeastern involving the Thirkell and Goldberg zones?

A. In my opinion the optional area allowed the whites in the Thirkell-Goldberg optional zone to attend Northwestern for as long a period in the 1950's as this zone existed and until 1962 when it was discontinued.

Q. Do you have Exhibit 132?

A. Yes, I do.

Q. Doctor, directing your attention to the Northwestern-Chadsey optional zone, can you locate it on the map, first of all?

A. Northwestern High School is to the northeast. Chadsey is to the southeast, and the option between these two zones is the area which covers the Newberry Elementary School in the southeastern corner between the two high schools.

Q. What does the census map for 1950 show with respect to that area?

[1431] A. To the optional area, sir?

Q. Yes.

A. According to the 1950 census map the Newberry elementary area would appear to be about 80 percent green, indicating a population of non-whites from 5 to 25 percent, the balance orange, indicating 50 to 85 percent non-white.

Q. And in 1960, what is the racial composition of Chadsey High School?

MR. BUSHNELL: If the Court please, I do believe this testimony is all cumulative and repetitious. Mr. Lamson through Mr. Caldwell has put in all of these statistics and numbers and colors, everything over a two day period.

MR. LUCAS: Your Honor, I don't believe that the expert testimony would be particularly useful to the Court unless he can reference it to some particular data. I'm sure the objection at that time would be no foundation. I'm trying to make it as brief and abbreviate it as much as possible and still give it meaning to the Court.

THE COURT: Proceed.

Q. (By Mr. Lucas) What was the percent black population of Chadsey High School in 1960?

A. In 1960 the percentage black population in Chadsey was 41.3.

[1432] Q. And what was the population of Northwestern?

A. The population percentage of black in Northwestern was 99 percent in 1960.

Q. What does the 1960 census show for the Newberry optional area in terms of its non-white population?

A. The 1960 census indicates that the Newberry elementary attendance area was about half orange and half red, indicating between 50 percent and 100 percent non-white.

Q. What was the percentage of the black enrollment at Newberry in 1960?

A. The percentage of blacks at Newberry in 1960 was 87.8 percent.

Q. That would be pupil enrollment in the school, is that correct?

A. Yes.

Q. When was the Newberry zone eliminated, Doctor?

A. The Newberry zone was eliminated in 1960-61 school year.

Q. Do you have an opinion, Doctor, as to the effect of the Newberry optional area?

A. In my opinion the existence of the optional area at Newberry allowed the whites in that area to attend Chadsey for such time in the '50's as it was in existence and through 1961, for the 1960-61 school year.

Q. And was Chadsey a predominantly white or predomonantly black school in 1960?

A. It was predominantly white.

[1433] Q. And Northwestern?

A. It was predominantly black.

Q. Dr. Foster, in your experience new optional areas occur between schools of different or the same racial compositions?

A. Generally different compositions, racial compositions.

Q. Dr. Foster, from your examination of the data did there appear any capacity problems or other administrative problems which might have call for the use of an optional area at Newberry?

A. None at all. In 1960 Northwestern Senior High was over populated by approximately 887 students. Chadsey was under-populated by 258 students.

Q. Dr. Foster, examining those two high school attendance areas in terms of their capacity and their pupil populations, were there steps which could have been taken which would have resulted in the elimination of the overcrowding or minimizing of it between those two schools and also have provided additional racial integration?

In my opinion Newberry could have been transferred, the Newberry elementary zone to Chadsey, which would have not only held the integration status of the two high schools, but relieved some of the overcrowding in Northwestern.

Q. What was the enrollment in Newberry at that time?

A. The enrollment at Newberry was in 1960 551 students.

Q. The percent black?

[1434] A. The percent black was 7.8.

MR. LUCAS: Your Honor, the next optional area may take some time. If the Court was going to take a recess at any time in the near future —

THE COURT: All right, we will take one now, then. We will take a short recess.

(A recess was thereupon taken.)

Q. Dr. Foster, will you step to the map, please.

Directing your attention to the optional zone between Northwestern and Western, would you describe the zones in question and the optional areas, please, sir?

A. The Northwestern High School attendance zone is to the north, with the optional area in cross- hatch in the middle. To the south and further south from the optional area is the Western High School attendance area which borders the south part of the district and the River.

Q. Directing your attention to the 136-B, the 1960 census data, what is the non-white population of the two zones?

A. For Northwestern about 80 percent of the area is either orange or red, indicating a non-white population of 50 to 100

percent. The balance of the area to the east is mostly green with some blue, indicating a non-white population of 5 to 25 percent, perhaps a bit more.

[1435] Q. And, Western?

A. Western to the south is largely green except for a small white area to the west and I would say about a quarter of the zone in the central part is blue. The blue part represents 25 to 50 percent non-white, the white area to the west of the zone representing 0 to 5 percent non-white and the green area which makes up the bulk of the attendance zone 5 percent to 25 percent non-white.

Q. The optional area, Dr. Foster, what elementary schools does it contain?

A. The optional area between the Northwestern High School and the Western High School contains to the northeast three elementary schools, Kennedy Elementary attendance area, Owen Elementary School attendance area, and Chaney attendance area. The section of the optional zone to the southwest contains the Craft Elementary attendance area and the Potter Elementary attendance area. That would be south of Newberry.

Q. What is the underlying non-white population for that last elementary zone?

A. For the Potter-Craft portion of the optional zone it's about I would estimate 50 percent green, which is 5 to 25 percent non-white, a small portion to the southeast of blue, representing 25 to 50 percent non-white, and the northern third of orange, representing 50 to 85 percent non-white.

[1436] Q. Directing your attention to the 1950 census map, Plaintiffs' Exhibit 136-A, would you tell us what the racial composition of the optional attendance area is in terms of its non-white?

A. The total optional attendance area is predominantly green with a small patch of blue to the northwest, a small patch of orange to the north, and a small patch of white to the southeast section of the optional area, the green representing 5 to 25 percent non-white, the white area representing 0 to 5 percent non-white, the orange area representing 50 to 85 percent non-white, and the blue representing 25 to 50 percent non-white.

Q. And the Western area at that time, what was the racial composition?

A. The Western High School attendance area was predominantly green with small patches of white to the far east section and the far west section.

Q. Does it contain any orange or red or blue?

A. No, sir.

Q. And the Northwestern zone?

A. The Northwestern zone to the northwestern part is predominantly white, and the eastern and southeastern section is predominantly white, about 50 percent of the interior of Northwestern is orange, green, blue, and red.

Q. What is the 1960 pupil enrollment at Northwestern, Dr. Foster?

A. In 1960, Northwestern had a pupil enrollment of 2757 pupils.

[1437] Q. And the percentage black?

A. At that time the school was 99 percent black.

Q. And Western, what was its enrollment and percentage black?

A. In 1960 the enrollment at Western High School was 1,718 pupils, and the percent black was 15.3.

Q. Dr. Foster, can you trace the changes in that particular optional attendance area from the years as reflected by the overlays and the boundary guide books?

A. Yes. Since our boundary guide books and overlays start in 1959, from 1959 through 1961 the optional zone was as depicted on the 1959 overlay, Exhibit 109-A. In 1962-63 school year the optional zone was revised in the southern and southeastern portion to drop off the area south of Myrtle — I believe it is Myrtle Avenue. It is depicted on the map by the red boundary line here.

Q. Does that area then become a part of the Western zone?

A. Yes, it does.

Q. All right. I notice that that is broken up into three sections, three particular areas. Can you tell me the reason for that?

A. It is broken up because different things happen to the different sections –

MR. BUSHNELL: (Interposing) If the Court please, if the witness can tell us what happened, I have no objection. I do object to his testifying as to the reason for [1438] it being broken up for the reasons previously stated by Mr. Sachs.

THE COURT: Well, I'm not sure what the answer calls for, or what the question calls for.

MR. LUCAS: I merely asked him to explain –

THE COURT: The witness proposed to tell us what by reason of the exhibits and the explanation of Mr. Henrickson caused the breakup of that unit.

MR. LUCAS: Yes. There is a difference in the appearance of the overlay, and I'm asking him to explain merely what that difference reflects.

MR. BUSHNELL: All right, no objection to that.

A. The difference is the red line in the north and eastern area, and the reason for that is that different things happened to this later on.

Q. (By Mr. Lucas) What does the boundary indicate? Is that a particular elementary boundary, or do you know, Doctor?

A. I'm not certain as to that, sir.

Q. All right. What are the other changes that occurred in the optional attendance area?

A. In the following year, in 1963-64, the optional zone of Potter and Craft Elementary attendance areas was eliminated from the total optional zone and moved into the Western High School area. [1438-A] It is represented on the overlay by the red boundary, and on the east by the blue boundary.

[1439] Q. All right. What other changes were made?

A. In the following year, in 1964-65 the eastern portion of what was left of the optional zone was transferred into North-

western. I believe this comprises the Kennedy Elementary attendance area represented on the west by a green strip, on the south and northeast by, well, simply by the green strip indicating it was moved into Northwestern. So that in the '64-65 school year there was only the portion left of Owen and Chaney Elementary areas and only part of them.

In 1965-66 the optional zone as it originally existed was completely eliminated, what had been left in 1964-65 was moved into Murray, so that by the end of 1965 —— by the end of 1966 the optional zone was eliminated.

Q. In both cases, the optional attendance zones were split between the two original schools or were they sent to other areas, Doctor Foster?

A. In all instances they were assigned to either Western or Northwestern.

Q. Directing your attention, Doctor, to Plaintiff's Exhibit 132, would you look at Western and Northwestern and give us first of all from Western the percentage of blacks or the number of black students in the Western constellation?

MR. BUSHNELL: When?

MR. LUCAS: 1960.

[1440] A. In 1960 the number of black students in the Western constellation was 8,212.

Q. How many of those, Doctor, attended high school, Western High School?

A. The number of blacks in Western High School was 263.

Q. What per cent was that? This was a percentage of 3.2 as compared to the total system percentage for blacks of 12.4.

Q. Northwestern, what was the percentage black enrollment there? First of all, the total enrollment?

A. In the Northwestern High School zone the total enrollment in the constellation of black was 18,979.

Q. Doctor, what number of black students ended up at Northwestern High School?

A. In 1960, 2,728 blacks.

Q. What percent is that?

A. Making a percentage of 14.4 compared to the system of 12.4 for blacks.

MR. BUSHNELL: Excuse me, when you speak of the system, are you talking about system wide or region wide?

MR. LUCAS: System percentage.

Q. (By Mr. Lucas) Reading across, at Northwestern what was the number of whites in the constellation?

[1441] A. The number of whites in the Northwestern constellation in 1960 was 5,512.

Q. Northwestern?

A. I beg your pardon, Northeastern that was. The correct figure is 2,034.

Q. How many whites ended up in Northwestern High School, Doctor?

A. In Northwestern High School 29 whites.

Q. What per cent is that?

A. With a percentage of 1.4 compared to the system wide percentage of whites of 19.6.

Q. Better go back to Western and tell me how many white students there are in the Western constellation?

A. In 1960 in the Western constellation there are 6,971 whites.

Q. How many ended up in Western High School?

A. 1,424 whites attended Western High School in 1960 making a percentage of 20.4.

Q. As compared to the system white percentage?

A. The system white percentage was 19.6.

Q. The same exhibit, Doctor Foster, directing your attention to the page reflecting the 1964 — '65 —

MR. BUSHNELL: Excuse me, Mr. Lucas. For the record I am wondering if Doctor Foster can tell us how he figured his percentages of system wide? All high school students?

[1442] MR. LUCAS: Doctor Foster didn't figure these percentages. These were testified to previously and admitted into evidence.

THE COURT: Will you relate to Mr. Bushnell on what basis they were computed?

MR. LUCAS: Perhaps Mr. Caldwell can best respond. I think I know, but I think he has more accurate information.

MR. CALDWELL: The constellation figures, your Honor, represent the total number of students in that constellation as represented in the racial counts for that school year. So that in 1960 Central, for example, had 14,317 blacks in the constellation, junior high, elementary and senior high.

MR. BUSHNELL: I understand.

MR. CALDWELL: Does that answer your question?

MR. BUSHNELL: I am asking how the high school percentgaes were figured, total number of kids in the constellation divided into the total number in the high school, is that it?

MR. CALDWELL: Yes. On each page, each column is totaled up.

MR. BUSHNELL: The same procedure was used [1443] for system wide, total number of kids system wide divided into total number of high school kids?

MR. CALDWELL: Right.

MR. BUSHNELL: Thank you.

Q. (By Mr. Lucas) Have you located the 1964-65——

A. Yes, sir.

Q. Tell us how many black students were now in Western?

A. In Western High School in 1960 ——

Q. (Interposing) Western constellation, Doctor.

A. I beg your pardon. In the Western constellation in 1964-65 there were 9,371 blacks.

Q. How many of those ended up in Western High School?

A. In Western High School, 727.

MR. BUSHNELL: If the Court please, I will object to the form of the question on the basis of what Mr. Caldwell just told

us, it was how many were then in high school, not how many of these kids ended up at the high school.

MR. LUCAS: I think that is a better statement of the question, your Honor. I will accept it.

A. In Western High School in 1964-65 there were 726 blacks.

Q. (By Mr. Lucas) What percent does that reflect?

A. This reflects a percentage of the total constellation of 7.7 as against a total of 14.5 for the blacks in the system.

Q. All right, and the white students?

[1444] A. In the Western constellation in 1964-65 there were 7,878 white students.

Q. How many of them were enrolled in Western High School?

A., In Western High School in 1964-65 there were 1,473 white students reflecting a percentage of 18.7 as against a total system percentage for whites of 22.0.

Q. Directing your attention, Doctor, to Northwestern, what is the number of black students in the constellation? This is also for 1964-65 school year.

A. In Northwestern for the '64-65 school year there were 23,224 blacks in the constellation.

Q. How many of those blacks were enrolled in the high school?

A. 2,737 blacks in the high school in '64-65.

Q. And their percent?

A. Reflecting a percentage of 11.8 as against a system wide percentage of 14.5.

Q. How many white students were shown in the Northwestern constellation?

A. In 1964-65 in the Northwestern constellation there were 1,173 white students.

Q. How many white students were in Northwestern High School?

A. A total in '64-65 of 13 white students.

Q. What per cent is that, Doctor?

A. 1.1 per cent as against a system percentage of 22.0.

[1445] Q. Dr. Foster, do you have an opinion as to the affect of the operation of the optional attendance zone for the period of time in which it was used?

A. My opinion is that the optional zone between Northwestern High School and Western High School allowed for a two-way traffic, as in all the others, of whites to go into Western from the optional zone for as far back as the zone existed prior to 1959 and until such time as the different portions of the zone were stopped. It also allowed blacks in the optional zone to move into Northwestern, thereby increasing segregation in both instances.

Q. Doctor, from examining the boundary guide books and the overlays prepared from them, can you describe the boundaries, attendance boundaries for Northwestern separately for me?

MR. BUSHNELL: For what period?

MR. LUCAS: Starting with 1959 in as far as they are represented on the maps.

A. The boundary for Northwestern High School in '59 is so.

Q. (By Mr. Lucas) Would the boundary include the optional area if you just reflected Northwestern separately?

A. If you were reflecting Northwestern separately, I would think it would have to include the dual overlapping concept of the optional zone, because this would, in fact, be part of the Northwestern zone as well as part of the Western zone.

[1446] Q. So, in describing the Northwestern zone you would include that area. Would you also include that area in describing Western's attendance zone?

A. I would think it would have to be included, because students from that zone were allowed to overlap into Western as well as into Northwestern.

MR. LUCAS: Your Honor, may the witness place a chair there so that he might sit and perhaps use the pointer?

THE COURT: Yes.

Q. (By Mr. Lucas) Dr. Foster, directing your attention to the map again, the area known as Chadsey and also the area known as

Mackenzie, would you locate an optional zone with reference to those two schools?

A. Mackenzie Senior High School is located to the northwest. The optional zone is the portion of the Sherrill elementary attendance area north of Tireman Street, and to the south is the Chadsey Senior High School attendance area.

Q. With reference to the 1960 demographic data, from the census boundaries can you tell me the racial composition, non-white composition of those particular areas?

A. Well, the Mackenzie ——

MR. BUSHNELL: (Interposing) Objection. If the Court please, I don't recall that the '60 demographic [1447] data constitutes an exhibit. I think certain of it has been transposed to the map, if that is what Mr. Caldwell has reference to.

MR. LUCAS: My name is Lucas, and it is 136-B.

MR. BUSHNELL: It is the map?

MR. LUCAS: Yes.

MR. BUSHNELL: I'm sorry I got your name wrong.

Q. (By Mr. Lucas) Would you continue, sir?

A. The Mackenzie High School attendance area is almost completely white, indicating a 0 to 5 percent non-white population. Along the eastern border I would estimate 10 percent of the total area is green, representing a 5 to 25 percent non-white population, and there is little area to the east which is mostly orange with a small patch of blue, representing a 25 to 85 percent population. The optional zone representing the northern part of Sherrill Elementary School is almost entirely orange with a little patch of green to the extreme north, the orange representing 50 to 85 percent non-white, the green representing 5 to 25 percent non-white. As to the Chadsey Senior High School to the south —

THE COURT: Witness, that overlay isn't quite exact, and I wonder if it changes your description.

[1448] I notice at the bottom it doesn't match. That might make a difference in your description of that zone. Does that?

MR. LUCAS: Yes.

Q. (By Mr. Lucas) Would you describe once again the optional area as it appears on the map adjusted over the base map, please?

A. Thank you, your Honor. The adjusted overlay indicates that the optional attendance area comprising the northern part of Sherrill Elementary attendance area is entirely orange, 50 percent to 85 percent non-white. Going south into the Chadsey Senior High School area, the northern and northeast portion is orange and red, indicating 50 to 100 percent non-white. To the south, the southern two-thirds of the zone, a good part of it is white, indicating from 0 to 5 percent non-white. A considerable portion is blue, orange and green, ranging from 24 percent non-white to 85 percent non-white.

Q. Directing your attention to the 1950 census map, Plaintiffs' Exhibit 136-A, and, Doctor, be careful for the map slipping in any way, would you examine the Mackenzie zone and tell me whether the non-white percentage is reflected there?

A. In the Mackenzie zone I believe it is entirely white, indicating a 0 to 5 percent non-white population in 1950.

Q. And the optional attendance area?

[1499] A. The optional attendance area is entirely white, representing a percentage of 0 to 5 percent non-white.

Q. Is that the Sherrill area you referred to, Doctor?

A. That is part of the Sherrill area, yes.

Q. Directing your attention to the Chadsey zone and immediately below the Sherrill area that is included in the optional zone, what is the demographic information there?

A. The southern part of the Sherrill attendance area, which is in the Chadsey High School zone, is all blue, representing 25 to 50 percent non-white.

Q. Would you describe the rest of the Chadsey zone?

A. The major portion of the balance of Chadsey zone is white, representing a 0 to 5 percent non-white population. To the northeast we have a red area representing 85 to 100 percent non-white. Immediately below this we have a green area, and to the southwest we have a portion colored green, representing in both

cases a 5 to 25 percent non-white. On the extreme eastern, northeastern pocket there is a blue area, representing 25 to 50 percent non-white.

Q. In 1960, Dr. Foster, what was the enrollment at Chadsey High School?

A. In 1960 Chadsey Senior High School had 2,692 students.

Q. What was its percentage black?

A. The percentage black for Chadsey Senior High School was 41.3 [1450] percent. And the Mackenzie School, Doctor?

A. In 1960 the Mackenzie School had a population and student enrollment of 2,799.

Q. What was its percentage black, please?

A. Its percentage was 12.2 percent black.

Q. What was the capacity of Chadsey High School at that time?

A. The 1960 capacity figure for Chadsey was 3,328, indicating that they had available space of approximately 636 students.

Q. And Mackenzie?

A. The capacity for Mackenzie Senior High in 1960 was 2,832, indicating they had available space of 33 students.

Q. Neither school then was overcrowded, is that correct?

A. That is correct, sir.

[1451] Q. Do you know, Doctor Foster, or has the information been made available to you that indicates the date of creation or establishment of the Sherrill optional zone?

MR. BUSHNELL: Could I have that question again, please?

MR. LUCAS: I asked him if he knew or had any information that was furnished to him which would indicate the establishment date of the Sherrill optional zone.

MR. BUSHNELL: Thank you.

A. The data which I went over indicated that the optional zone was created in 1958.

Q. (By Mr. Lucas) Is the percentage of black students larger at Chadsey than it is at Mackenzie, that is in 1960?

A. In 1960 it was almost triple in terms of percentage being 41.3 per cent at Chadsey as compared to 12.2 per cent at Mackenzie.

Q. How long did the Sherrill optional area last?

A. It was removed in the fall of '63. 1963-64, indicating that it lasted through the spring of 1964 and at that point it was placed into Mackenzie High School zone.

Q. Let's look at the overlay, Doctor. Was it still in existence in '60-61 according to the overlay?

A. That is correct. It is noted by a blue boundary line on the exhibit.

A. In '61-62?

[1452] A. Still in existence, designated by the orange boundary line on the exhibit.

Q. According to the information from which this exhibit was prepared, it was still in existence in '62-63.

A. That is correct, as indicated by the red boundary line on the exhibit.

Q. In 1963-64, Plaintiff's Exhibit 109-E reflects what change in that assignment?

A. Exhibit 109-E indicates that in '63-64 the optional zone was moved into Mackenzie Senior High School attendance area.

Q. Doctor Foster, directing your attention to Plaintiff's Exhibit 132 which I believe you have with you –

A. It may be on the floor here.

Q. Would you look at the 1960-61 data and tell me what the number of black students in the Chadsey area, Chadsey constellation was?

A. In the Chadsey constellation in 1960-61 there were 3,997 blacks.

Q. How many of those were in the high school, Doctor?

A. 1,114 were in the high school, reflecting a percentage of blacks of 27.9. This compares to the system wide percentage of blacks in that year, '60-61 of 12.4 per cent.

Q. In Mackenzie what was the number of blacks in Mackenzie?

A. In Mackenzie Senior High School in 1960 – I beg your pardon – in the Mackenzie constellation I assume you want –

[1453] Q. Mackenzie constellation.

A. In 1960-61 the number of blacks was 6,547.

Q. How many of those were in the high school?

A. A total of 341 blacks were in Mackenzie Senior High School. This reflects a percentage of 5.2 as opposed to a system wide percentage of 12.4.

Q. What was the percentage of whites in that school?

A. In the Mackenzie –

Q. Let's talk about the constellation first of all.

A. The number of whites in '60-61 was 9,640.

Q. How many of those were in high school?

A. 2,443 whites were in Mackenzie Senior High School in 1960, representing a percentage of 25.3 as compared to a system wide percentage for whites of 19.6 in that year.

Q. Doctor Foster, do you have an opinion as to the effect of the optional attendance area in the portion of the Sherrill zone as shown between Mackenzie and Chadsey?

A. In my opinion the effect of this optional zone was to allow whites in the optional area to attend Mackenzie from 1958 when it was established until 1963 when the zone was dissolved and at the same time to allow blacks to go to Chadsey to the south.

Q. What effect, if any, did this have on the pattern of assignment of pupils to schools in those areas?

A. In my opinion this furthered the segregated status –

[1454] MR. BUSHNELL: Excuse me, Doctor, before you continue. I confess I don't understand the question. Would you repeat it?

MR. LUCAS: If the reporter wants to read it I think it is perfectly clear.

(The question was read by the reporter.)

MR. BUSHNELL: What schools?

MR. LUCAS: The ones we have been talking about for fifteen minutes. If counsel wants to question the witness I think he can do it on cross examination.

THE COURT: The two high schools.

MR. BUSHNELL: Are we talking about the two high schools?

THE COURT: Yes.

A. My opinion would be that the existence of the optional zone heightened the segregated status of the assignment pattern to the two high schools under consideration, Mackenzie and Chadsey.

MR. BUSHNELL: I will object to that and ask it be stricken. There has been no testimony whatsoever, no foundation laid for a pattern of segregated status.

THE COURT: The answer may stand.

Q. (By Mr. Lucas) Doctor Foster, directing your attention at this time to the Denby-Southeastern optional area, would you locate those on the map and describe them, please?

[1455] A. Denby Senior High School to the northeast of the system, the optional area to the southeast representing at that time the Finney and Hanstein Elementary attendance areas; Finney to the north and Hanstein to the southeast in the optional zone.

Then to the south and southwest is the Southeastern High School attendance area.

Q. What was the enrollment at Denby in 1960?

A. The enrollment at Denby Senior High in 1960 was 2,529.

Q. What per cent blacks were at Denby?

A. Zero per cent black at that time.

Q. What was Denby's capacity at that time, Doctor Foster?

A. In 1960 the capacity figure for Denby was 2,378, I believe, indicating that they were approximately 150 over capacity in their enrollment.

Q. Doctor Foster, with reference to the optional area do you have an opinion as to its administrative use in terms of relieving over-crowding or using excess capacity?

[1457] . . .

A. If we look to the capacity of Southeastern High School at that time which was 2,228 and the enrollment which was 2,400 students we find that there were available spaces in Southeastern for 172 students. Therefore, there is no indication that there would be any administrative reason to create this optional zone for students to go to either Denby or Southeastern.

Q. What was the racial percentage at Southeastern, Doctor Foster?

A. The racial percentage at that time at Southeastern was 30.9 per cent black.

Q. And Denby was zero per cent black, is that right?

A. That is correct.

MR. CURTNER: I think he is in error. It must be an oversight. The enrollment of Southeastern was 2,400 in 1960?

[1458] A. That is what my figures have.

MR. CURTNER: The capacity was what?

A. 2,228.

MR. CURTNER: It was over capacity instead of under capacity.

MR. LUCAS: I thought he said over capacity.

A. I beg your pardon, I did say under capacity, I believe.

Q. (By Mr. Lucas) Was it over capacity?

A. Yes.

THE COURT: Let me ask you this: At that time, as I understand your testimony or at least the figures, I think you misstated the matter of capacity as over or under, you had it reversed.

A. Right.

THE COURT: My understanding from your figures was that both Denby and Southeastern were over capacity?

A. At about the same number, that's right. I'm sorry.

THE COURT: That is as I understood the figures.

A. That's right.

MR. LUCAS: Thank you.

A. So in terms of administrative need for this I think the same opinion would still hold.

Q. (By Mr. Lucas) Doctor Foster, would you step over to the large [1459] map, please.

(The witness proceeded to the large map.)

Q. (By Mr. Lucas) Directing your attention to the area marked Denby and Finney, is the high school boundary of Denby, does it include any of the areas which you previously have been describing as an optional area?

MR. BUSHNELL: If the Court please, are we not talking about the 1970 attendance area, which I think Exhibit 2 as it is presently constituted or whatever it is, reflects?

MR. LUCAS: 137-C - Senior High Attendance Areas is the overlay.

MR. BUSHNELL: For '70-71?

MR. LUCAS: Yes. Exhibit 2 is the base map.

MR. BUSHNELL: The prior questioning went to 1960, as I recall.

MR. LUCAS: That's correct.

MR. BUSHNELL: May I ask the question be read back?

(Last question was read by the reporter.)

A. As I read the overlay, Denby High School attendance area does not include any of the optional area.

[1460] THE COURT: Now, going back to your previous answer with respect to the optional area between Denby and Southeastern, although I don't think you completed your statement, I assume that administratively it is your opinion that there was no need or reason for the establishment of an optional area in view of the situation in the two high schools.

A. That is correct, sir, since both of them were in the same capacity status, roughly.

THE COURT: All right. Now then, to complete the picture as far as Denby and Finney are concerned, I take it by comparison of

the two maps before me that an extension of your answer about Denby into the Finney area would mean that the optional area now is – is it all in Finney now, the former optional area?

A. Yes, the elementary zones of Hanstein and what was then Finney, which was, I believe a K through 9 structure.

MR. BUSHNELL: The additional fact being, your Honor, that Finney High School that this exhibit on the big board reflects did not exist in 1960.

THE COURT: Yes, I understand.

Q. (By Mr. Lucas) Dr. Foster, from your examination of the Southeastern zone does the information furnished you in your study of the boundary guide books indicate that the Southeastern [1461] zone – I'm sorry – that the optional area is a part of the Southeastern zone, or was originally part of the Southeastern zone?

A. It would appear so from the configuration, yes.

Q. Dr. Foster, do you have an opinion as to the effect of the carve-out of a portion of the Southeastern zone in an area which is 0 to 4.9 percent non-white, according to the 1960 census between that Southwestern and Denby, as to the effect of such a carve-out?

THE COURT: Do you mean Southeastern?

MR. LUCAS: Southeastern and Denby.

THE COURT: I thought you said Southwestern.

MR. LUCAS: I may have, your Honor. Thank you.

A. The data which I went over indicated that there were no blacks, black students in the optional zone. My opinion as to the effect was that the creation of the optional zone out of the Southeastern High School attendance area allowed the whites in the optional zone to attend the then all-white Denby High School rather than Southeastern, which was 30.9 percent black.

Q. Dr. Foster, have we found 132-A again?

A. Yes, I have it right here.

Q. Directing your attention to 1960, would you examine the black [1462] pupil population in the Southeastern zone? Tell me the number of the black students in that constellation.

A. In 1960 in the Southeastern zone there were 7,962 black students.

Q. And what number of them were in the high school?

A. Of this number 742 blacks were in the Southeastern High School, reflecting a percentage of 9.3, compared to a system average of 12.4.

Q. Directing your attention to the Denby High School area, what is the number of white students in that constellation?

A. The number of white students in Denby, in the Denby constellation in 1960-61 was 10,007.

Q. And what was the number in high school?

A. Of that number there were 2,529 in high school.

Q. And what percent was that?

A. That reflected a percentage of 25.3, as compared to a system percentage of 19.6.

Q. Dr. Foster, do you have an opinion as to the effect of the utilization of an optional area taken from the Southeastern zone between Southeastern and Denby on the racial characteristics of those schools?

A. In my opinion the creation of such an optional zone allowing the whites to go into Denby rather than be assigned to Southeastern would lead the general population of Southeastern [1463] to perceive their school as an isolated school, as a contained school, and therefore of less worth as a high school.

Q. Dr. Foster, directing your attention to the Southwestern and Western High School zones, would you describe both of those zones and the optional area in between?

A. On the 1959 overlay, the Western zone is to the northeast, and the Southwestern attendance area is to the southwest. In between you have almost two optional zones, but we are dealing with them as one optional zone to the south. To the south of the patched area you have Gillies Elementary attendance area, which is part of the optional zone. The northern section includes Bennett, Beard, Harms, and Higgins Elementary attendance areas. I don't believe it includes the total attendance zones for those four

elementary schools. I believe there is a portion south of the marked line which is part of those, some of those elementary areas, but it is not part of the optional zone. I believe that line goes Longworth, Chatfield and Regular. I would have to see the book to make certain. But, that appears from the map to be accurate.

Q. Dr. Foster, what is the enrollment of Southwestern in 1960?

A. The enrollment of Southwestern in 1960 was 1765 students.

Q. And what was its racial percentage?

A. It is reflected 61.6 percent black.

Q. What was its capacity?

[1464] A. 1,952 students capacity for Southwestern.

Q. Did it have excess capacity, Doctor?

A. It did, of nearly 200 students.

Q. What about Western? What was its enrollment?

A. Western Senior High School in 1960 had an enrollment of 1718 students.

Q. What was its percentage black?

A. A percentage black of 15.3.

Q. What was its capacity?

A. A capacity of 1,926 stations.

Q. What does the 1960 census data show with respect to the Western zone?

A. The Western High School attendance zone is covered in a major way by the green, representing 5 to 25 percent non-white population. There is a considerable portion of blue in the center section, representing 25 to 50 percent, and abutting the optional zones to the west and southwest there is a white area, representing 0 to 5 percent non-white population.

Q. And the Southwestern zone in 1960?

A. Southwestern High School attendance area in 1960 is represented by the census map as being white for approximately

40 percent along its northern frontier, indicating a 0 to 5 percent non-white population. To the extreme southwest there is a considerable portion represented as red, 85 to 100 percent non-white [1465] In the south and southeast it is about equally divided between green and blue, representing 5 to 50 percent non-white.

Q. Directing your attention to the northern section of the optional attendance area, what is shown on the 1960 census map for it?

A. In the 1960 census map it indicates the northern section of the optional area to be all white, indicating a 0 to 5 percent non-white population.

Q. And the southern portion of the optional area?

A. The southern portion –

Q. (Interposing) Would you refer to that by the elementary school?

A. It covers the Gillies Elementary attendance area. The top part of it is white, representing 0 to 5 percent non-white. The major portion of the southern part is blue, with a little green, representing approximately 5 to 50 percent non-white.

Q. What was the percentage black of the Gillies Elementary area in 1960?

A. In 1960, Gillies had an enrollment of 570 students, 23.7 percent of whom were black.

Q. Now, you have described the schools in the northern part of the optional zone as Beard, Bennett, Harms, Higgins, and Wilson, is that correct?

A. The major portion of these following a line I believe along Longworth, Chatfield, and Regular.

Q. Would you give us the enrollment of each of these schools and [1466] their percentage of black students?

A. In 1960 the Beard Elementary School had 697 student enrollment, .3 of a percent black. The Bennett Elementary School, 913 enrollment, 71.1 percent black. The Harms Elementary School, 558 enrollment, .4 of a percent black. The Higgins Elementary School, 822 enrollment, 3.8 percent black.

Q. Directing your attention to Plaintiffs' Exhibit 136-A, the 1950 census map, would you examine the northern portion of the Southwestern option and tell us if it has the same or a different racial percentage non-white?

In the 1960 census, the northern portion, please.

A. The northern portion of the Gillies–

Q. No, the northern section of the Southwestern option.

A. The total option?

Q. Yes, please.

A. It is all white, therefore representing a non-white population of 0 to 5 percent and, I believe, this was the same as was found in 1960.

Q. Is there a change in the Southwestern zone in terms of the particular portion of it and its non-white population? You may refer to Exhibit 136-A and 136-B.

A. In the period from 1950 to 1960 the southwestern portion of the Southwestern attendance area went from blue and white to completely red indicating a considerable transition approaching [1467] an all-black area.

Q. What elementary schools appear in that area, generally?

A. On the current underlay, Mark Twain, Boynton, Fisher and Jeffries.

Q. That underlay is based upon the official School Board map dated when?

A. Dated in 1969.

Q. Referring to the second portion of the Southwestern option which has been described as the Gillies area, will you describe the change, if any, in that area?

A. The Gillies area in 1950 on the northern edge and on the western edge was white, representing a 0 to 5 percent non-white population. The center and southern portion were green representing a 5 to 25 percent non-white population.

In 1960, on the census map of the northern portion stays about the same and the southern portion moves from green to blue representing an increase in black population.

Q. How long did the Southwestern option continue beyond 1959, Dr. Foster?

A. The Gillies area which is the southern part of the option was eliminated in 1962-63. The optional zone at the northern portion of Southwestern, as I understand it, was eliminated in 1970-71 for the tenth grade. It was still in existence for the eleventh and twelfth grades which are going largely [1468] to Western. The tenth grade is assigned to Southwestern this current school year.

Q. Did the boundary maps you examined reflect the continuation of the Southwestern option? If you would like to refresh your memory by referring to the 1969-70 boundary maps, please do so.

A. They would have to be the 70-71.

Q. See if it is reflected in the 69-70 map.

A. Are those available?

Q. Give the exhibit number, please.

A. According to Plaintiffs' Exhibit 78-K, the boundary guide book for 1969-70, a description of the Southwestern Senior High School feeder pattern indicates that for the Beard Elementary School, K through 6, pupils living north of a line south of Chatfield and Regular have an option of attending Western Senior High.

For the attendance area of Bennett, Harms, and Higgins, all K through 6 schools, the footnote is made that pupils living north of a line south of Longworth had an option of attending Western Senior High.

Q. Directing your attention to the map and the following page of the Southwestern High School zone, does it show that optional area?

A. No, sir.

[1469] Q. I will show you, Dr. Foster, Plaintiffs' Exhibit 78-L and direct your attention to the volume therein called "Guide to School Boundaries – Region 2," and ask you to examine the Southwestern High School zone and ask you if an option appears on the map there?

A. The map would indicate that Higgins, Bennett, Harms and Beard go into the Wilson Junior High School and from there to Southwestern.

Q. Directing your attention to page 18 therein, does the optional area, is it shown there?

A. For Beard Elementary School, K through 6, the footnote indicates pupils living north of a line south of Chatfield and Regular have the option of attending Western Senior High School. For the elementary school, Bennett, which is K through 7-B, and for Harms and Higgins, both K through 6, the footnote indicates pupils living north of a line in this area which is south of Longworth have the option of attending Western Senior High School.

Q. Did you receive the information that this had been eliminated from the information supplied by Mr. Henrickson?

A. Yes, it was my understanding from the data that it had in this current year.

Q. It is my understanding this would apply to incoming tenth graders from that area?

[1470] A. Yes, the tenth graders only. The eleventh graders and twelfth graders would continue on option which, for all practical purposes in this case means to Western Senior High School.

Q. Dr. Foster, would you examine Plaintiffs' Exhibit 136-C, which is the 1970 census data and directing your attention to that same optional area which you had just described which appears in the 1970-71 boundary guide books, can you tell what percent non-white is shown for that area? Doctor, would you step so the Court can see where you are pointing. Step back here, please.

A. This would be for the original north part of the optional zone?

Q. Yes.

A. For the Harms, Bennett, Higgins and whatever it is — Beard Elementary attendance area, is that it?

Q. Yes.

A. This, according to the 1970 census map on the Plaintiffs' Exhibit 136-C, is still all white, indicating a 0 to 5 percent percentage non-white.

Q. Directing your attention to Plaintiffs' Exhibit 132 in 1960, Doctor, would you look at Western High School's constellation and give me the number of black students in the Western constellation in 1960.

A. The number of black students in Western constellation in 1960 [1471] is 8,212.

Q. How many black students are in Western High School?

A. 263.

Q. What percent is that, Doctor, in 1960?

A. It reflects 3.2 percent as compared to a system percentage of 12.4.

Q. How many whites are in Western constellation?

A. 6,971 whites in Western in 1960.

Q. How many of those were in the high school?

A. 1,424 whites in the high school.

Q. Their percentage?

A. It represents a percentage of 20.4 as compared to 19.6 for the system for whites.

Q. Directing your attention to Southwestern, will you tell me how many whites are in the Southwestern constellation according to the 1960 data?

A. The number of whites in the constellation, 6759.

Q. How many of those were enrolled in the high school?

A. 675.

Q. What percent is that?

A. 10.0 percentage as reflected or as compared to 19.6 for the system.

Q. How many blacks were there in Southwestern constellation at that time, Doctor?

[1472] A. 5,846 in 1960.

Q. The number in the high school?

A. 1,087 representing a percentage of 18.6 as compared to 12.4 for the system.

Q. Dr. Foster, do you have an opinion as to the effect of the utilization of these optional areas between Southwestern and Western High School?

A. From the data which I have gone over, my opinion is that the optional zone allowed the whites in the optional area to attend Western, not only allowed them to, but in fact, they did, and the blacks in the area attended Southwestern. This, in turn, would have the effect of heightening the segregated situation in the two high school areas and in the system as a whole.

Q. But, with respect to the Gillies portion of the Southwestern option, did this provide, is your opinion the same or does it provide anything else at the Gillies area? There is non-white population, a larger percentage of non-white shown in the Gillies area, is that correct?

A. That is correct. Well, I think the two-way release situation would hold for Gillies because it allowed the blacks in that area to move into Southwestern and stay there and the whites to go to Western.

Q. Dr. Foster, directing your attention to Plaintiffs' Exhibit 128-B, which is, "Total Enrollment and Percent Black of [1473] Students in Detroit Regular Zoned Public Schools – 1966 to 1970" –

A. Yes, I have a copy of that.

Q. Would you tell us the racial composition of Southwestern High School in 1969 before the change in the option at the tenth grade in 1970-71?

A. In 1969, Southwestern had an enrollment of 1483 and this enrollment was 86.7 percent black.

Q. In 1970-71 what is the enrollment of Southwestern with the elimination of the option of the tenth grade?

A. In 1970-71 the enrollment in Southwestern is 1,767, representing almost a 300 pupil increase from the year before, 1969, and a percentage black of 74.3, representing a decrease of 1969 of 12.4 percent.

Q. Doctor, from the period 1960 to 1971, do you have an opinion as to any techniques which would have been available which would have desegregated Southwestern and Western other than elimination of the optional zone? Are there any other techniques available?

A. Well, again I think if we would have a drawn boundary line east and west instead of north and south it is quite likely that a much better racial mix could have been obtained between the two high schools. Other possibilities, of course, would have been, which would have probably had less effect but [1474] still tended to desegregate the situation, would have been moving Gillies optional zone into Western, but I think you asked things that did not affect the optional zone.

Q. Right. Do you know, Doctor, from the material you have examined whether or not there was any change in Southwestern's physical plant between the period 1960 and 1970?

A. It is my understanding that within the past year or so an addition was made to the Southwestern Building Complex which included, I believe, some shops, I believe a dining room area and, if I remember correctly, a physical education facility was either improved or added and I believe that some additional student capacity was involved, but not very much. A minimal additional student capacity.

My understanding, if I recollect the figure correctly, the addition was priced at around $4 million.

Q. Dr. Foster, directing your attention to the Burroughs, I think it is Greusel attendance area, will you locate that on the map?

A. It's right here (indicating), but I believe later on there is an overlay – yes. The Greusel Elementary attendance area is directly west here in the Northeastern High School zone of the black patches.

Q. You mean black lines, is that correct?

A. Yes, on the '60-61 overlay.

[1475] Q. Plaintiffs' Exhibit 109-B?

A. Yes. The Burroughs Elementary attendance area is to the north and east of this black line here. (Indicating) The black-lined area represents the Thomas Elementary attendance area. In this instance it was an optional attendance zone.

[1476] Q. Is this an optional elementary attendance zone?

A. You could describe it, I believe as an optional junior high zone bettern than elementary.

MR. BUSHNELL: If the Court please, which is it? Counsel has testified to one school; the witness has testified to another.

A. The optional junior high area, sir.

MR. BUSHNELL: Thank you, sir.

MR. LUCAS: I will accept the witness' correction.

Q. (By Mr. Lucas) Can you tell us what the population was at the Thomas Elementary?

A. The optional area represented here in black lines is Thomas Elementary. The enrollment was 702 in 1960. The per cent black was 83.9.

Q. And what was the enrollment and per cent black at Greusel Junior High? Would you locate it, please?

A. Greusel Junior High is to the west. The attendance enrollment was 999 in 1960. The per cent black was 74.7.

Q. And what about Burroughs Junior High?

A. Burroughs is to the north. In 1960 the enrollment was 1,570. The per cent black was 31.4.

Q. The 1960 census, what does it show with respect to the racial composition of the Thomas area?

[1477] A. The Thomas area to the north is green, representing 5 to 25 per cent non-white. On the eastern border, perhaps 10 or 15 per cent of the total area, it is blue, representing 25 to 50 per cent non-white. The southern and southwestern portion, which I would estimate is over half the total area, is orange, representing 50 to 85 per cent non-white.

Q. Doctor Foster, do you know of any administrative problems, such as capacity, which may have occasioned the use of an optional zone in this particular area?

A. No, sir. In 1960 the Burroughs capacity was 1,472.

Q. The Burroughs is a predominantly white school?

A. Yes, it is, representing an enrollment of 98 over capacity. In 1960 Greusel, which is a predominantly black school, had a capacity of 928, and the enrollment figures represent an enrollment of 71 over capacity.

Q. In your opinion, was there any administrative reason in terms of capacity –

A. As a matter of fact, there was no less capacity available in either junior high school from the way I read the figures, and it would appear from the map that Greusel in distance is a good deal closer to the optional area than the Burroughs Junior High School, about half the distance or a third, I would estimate.

Q. Doctor Foster, is there a technique of desegregation, an [1478] administrative technique which could have been utilized in 1960 to desegregate both Burroughs and Greusel?

A. Well, for one thing the Thomas optional zone, elementary attendance area could have been assigned to Burroughs, which would further integrate or desegregate the Burroughs population and would bring the per cent black population in both Burroughs and Greusel to a much more similar figure.

Q. Do you have an opinion, Doctor Foster, as to the effect of the utilization of the optional zone in this particular instance?

A. In my opinion the effect of using this optional zone was to further increase segregation in the two junior high schools and to indicate to the resident population that whites could option out, and blacks could go to their predominantly racial school.

Q. Would you resume your seat, Doctor Foster. Doctor Foster, from your examination of these optional areas as they were used in varying periods of time, do you have an opinion as to the effect in terms of the total school system with respect to the identification or non-identification of schools?

MR. BUSHNELL: For the period of time to which the witness has testified, 1960, '61, '62, '63?

MR. LUCAS: During the periods of time the optional areas were in effect, from the '50's through 1971 [1479]

MR. BUSHNELL: There was testimony as to only one optional area in school year 1970-71. If the witness' testimony is restricted to the periods to which he testified to, I have no objection. If he is testifying to periods other than that, my objection is that no foundation has been laid.

MR. LUCAS: We will rest on the '50's through 1971, your Honor.

THE COURT: He may answer the question. I assume it is based on the periods he has covered by his testimony with respect to the optional areas.

MR. BUSHNELL: Very good, sir. With that restriction, no objection.

A. As I remember the question, it was what effect this had on a racial identifiability of schools?

Q. (By Mr. Lucas) The identification of schools in the Detroit system.

A. In my opinion without exception the optional zones reviewed increased the racial identifiability and identification of the schools involved, both white and black, or predominantely white and black, as the case might be.

Q. Doctor Foster, does the use of these techniques in some areas have an effect in terms of the perception of the community of schools besides the actual two schools to which the option was involved?

[1480] MR. BUSHNELL: Leading.

THE COURT: Leading questions are also to be governed by the discretion of the Court. I see nothing wrong with it.

A. Yes, I think there are some serious – well, what we might call side effects in terms of perceptions of the resident population, not only of the schools affected, but of the total system. If, in fact, the general scuttlebutt is that there are optional zones, there are opportunities for both whites and blacks to option out of zone assignments in the way in which integration is increased, then it appears to me –

Q. (By Mr. Lucas) Did you misspeak, Doctor? You said integration is increased.

A. Segregation. I beg your pardon.

Q. Go right ahead.

A. In a way in which segregation is increased, then it seems to me that the general perception of the population is that –

MR. BUSHNELL: If the Court please, the witness is not qualified as a sociological expert. He is qualified as an expert in school administration, school integration, school desegregation.

MR. LUCAS: And school segregation, your Honor.

THE COURT: I think it is within his area [1481] of competence.

A. The general perception of the population is that the school authorities are not interested in desegregating the system, because the decisions they make tend to further segregate it. I think this leads to a feeling of frustration. As a matter of fact, in some of the different data I went over there was considerable evidence of resident dissatisfaction with the School Board actions in regard to the optional areas and a feeling of frustration and a feeling that the Board was moving –

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[1483] . . .

A. Thank you. Yes, I think the perception is not only of rank and file community residents, but people of considerable influence in the community, along with School Board administration people, School Board members, School Board officials. In many cases they have substantiated this perception that I have recounted; that the optional zones did lead to greater pupil segregation and a feeling of frustration that the school authorities were not doing what was called for in terms of desegregation, and it had a generally debilitating effect on the image of the schools as far as all of these groups were concerned.

[1484] THE COURT: Let me interject this question: I was curious about this matter as you testified. You said that the actual use of the optional zones, in your opinion, meant that the blacks went to the black schools and the whites went to the white schools. I am generalizing pretty broadly.

A. Right.

THE COURT: Was this supported by the statistical information that you were given?

A. I think so, yes, and I think the figures that were entered from Plaintiff's Exhibit 132 in many cases could lead to this inference rather directly. Certainly not all black children opted to go to the black schools, certainly not all white children –

THE COURT: I am generalizing.

A. I am certain most of the white children opted to go to the white sections. I think the indication was clear that this actually happened.

THE COURT: All right.

Q. (By Mr. Lucas) One last question before we run into the deadline, Doctor Foster. You testified with reference to some construction of additional physical facilities at Southwestern, that is a gym and food service, this type of construction. Do you know of any administrative justification for continuing the optional attendance area in Southwestern in what is a white [1485] area to go into Western rather than Southwestern to 1970-71?

A. If I understand the construction business correctly there was no administrative reason to continue this to '70-71. I do understand from the data that this was the reason it was continued that the decision to change was waiting for the finish of the Southwestern construction project but in terms of student capacity I see no reason to have delayed this. The only reason I can see was that the Southwestern High School would be brought up to the so-called standards of Western High School and, therefore, it would be reasonable for whites to now attend it.

MR. LUCAS: Your Honor, I think any other matter would be going to a separate subject area.

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GORDON FOSTER

[1489] thereupon resumed the stand as a witness herein and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION (Continued) By Mr. LUCAS:

Q. Dr. Foster, did you make a study of zone changes and feeder pattern changes in the Detroit School System from data available to you?

A. Yes, I did.

Q. Do you have some examples of such changes in feeder patterns and zone lines that you have particularly examined?

A. Yes, I have.

Q. Directing your attention, Dr. Foster, to Plaintiffs' Exhibit 109-M – could you step down here – you may refer to your notes.

The exhibit has a label Jefferson [1490] Junior High by one of the schools located thereon. Would you examine the exhibit and explain it, Doctor, in terms of your analysis of the fact situation.

A. This particular exhibit is centered in the Northwestern constellation. It involves the Jeffries Housing Project which is in the center of our black marked exhibit.

In terms of elementary attendance area it involves primarily the Couzens, Edmonson and Poe Elementary areas which surround the Jeffries Housing Project and our feeder elementary schools basically go to Jefferson Junior High.

In Exhibit 78-A, which is our boundary book, in '59-60 it states, "Children living in the Jeffries Homes, in the buildings west of the John Lodge Expressway – " and the John Lodge Expressway would be roughly the black line just where Jefferson Junior High borders on and it is easy to determine because it is racially separated in terms of the census map, the blue on one side and the orange on the other for the Jeffries Homes.

Q. Green representing what, just for the record?

A. 5 to 25 percent and the orange representing 50 to 85 percent. "The children west of the Expressway in the Jeffries homes attend Hutchins Junior High School for grades 7-B to 9-A." The black line with the arrow points [1491] to the Hutchins Junior High School which is in the Northern constellation. Then they go to Northwestern at the senior high level.

The children living east of the John Lodge Expressway attend Jefferson for grades 7-B and 9-A and then in turn go to Northwestern. I believe in terms of numbers we have no transportation

records for 1959-60, but in Plaintiffs' Exhibit 63, which has to do with bussing or transportation, it indicates that in the year 1960 to '61 there were 219 children bussed from Jefferson to Hutchins; in 1961-62 we have no transportation or bussing but in 1962-63, 52 children were still bussed on this run, and then in 1963-64 it had diminished to 17 children.

Q. Dr. Foster, what was the enrollment and racial composition of Hutchins?

A. In 1960 the enrollment for Hutchins Junior High was 1,973 pupils, 69.9 percent of whom were black.

Q. What was the capacity at Hutchins at that time, Doctor?

A. The capacity of Hutchins in 1960 was 1757 stations, indicating an overpopulation of 216 students.

Q. Directing your attention, Doctor, to the other elementary school located adjacent to the arrow of the map, do you know the name of that school?

A. The school in the northern part of the district?

[1492] Q. Yes.

A. I believe that is Tilden Elementary School.

Q. What is its racial composition?

A. The racial composition of the student body at Tilden in 1960 was 50.3 percent black out of a total of 719 students.

Q. What was the racial composition of the Poe School? Would you point it out in reference to the housing project?

A. The Poe School would be the one covering part of the housing project and to the north. This is Poe at the end of the pointer. The Poe Elementary was 82.4 percent black out of a student population of 1,023.

Q. Can you locate Couzens on there, Doctor?

A. Couzens is the school to the south of Poe, the south part of the Jeffries Housing Project.

Q. What is the enrollment at Couzens in 1960?

A. The enrollment at Couzens was 1124, 96 percent of whom were black.

Q. Do you know, Doctor, from the record you have examined when those two schools were constructed?

A. I understand from the data that these two schools were built specifically for the Jeffries Housing Project.

MR. BUSHNELL: Which two schools?

A. Couzens was one of the schools, right?

Q. (By Mr. Lucas) Right.

[1493] A. Couzens was built in 1956. The other one – I made a mistake – was Poe, which we haven't discussed. I mean, Edmonson. I do not know when Poe was constructed.

Q. And what about the Edmonson School, Doctor?

A. The Edmonson School which is located just to the western border here I understand was constructed in '55. Couzens and Edmonson were built specifically for the Jeffries Housing Project.

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[1495] . . .

MR. LUCAS: Yes. If I might read from the Board meetings which were furnished us by the Board itself, not the Superintendent's minutes, but the Board minutes:

"New school sites."

"In order to provide school facilities—"

MR. BUSHNELL: Give us the page and date.

MR. LUCAS: Page 10, January 12, 1954.

"In order to provide school facilities for anticipated enrollment from Jeffries Housing Project and to relieve the overcrowded condition at the Poe School, it is deemed advisable to obtain the property in the area bounded by Brooklyn, Canfield, Lincoln and [1496] Lysander Avenues. This property is located west of the John C. Lodge Expressway adjacent to the large apartment buildings now being erected as part of the housing project. We recommend that the attorney be authorized to prepare a legal resolution to be adopted by the Board providing for the condemnation of the property.

"The eighth grade school building to be constructed on this site will have an approximate capacity of 1200 pupils."

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[1498] . . .

Q. (By Mr. Lucas, continuing) Dr. Foster, what was the effect in terms of pupil enrollment of the assignment of the students to the Hutchins Junior High School?

A. The changing of the feeder pattern from Jefferson to Hutchins of the group of 219 students who were bussed increased segregation in both Jefferson and Hutchins in terms of sending more blacks to Hutchins which was already nearly all black and in terms of sending less blacks to Jefferson which was 46.3 percent black.

Q. Was there any administrative reason in terms of capacities, overcrowding, that you could ascertain from your study of the record for such a transfer?

A. There doesn't appear to be since Hutchins as a result of the change was 216 over capacity, Jefferson was 129 over capacity, and it would appear that it wouldn't have affected either junior high to that extent.

Q. Directing your attention, Doctor, to the 1950 census map, can you describe what appears on the exhibit, Plaintiffs' Exhibit 136-A, in the area of the location of the Hutchins School?

A. The area surrounding the Hutchins Junior High immediately is [1499] orange representing 50 to 85 percent non-white and this in turn is surrounded by green, blue and white areas.

Q. Doctor, the area around what has been described as the Tilden Elementary zone on the 1950 map is what?

A. The Tilden Elementary zone on the '50 census map indicates about a third white with a population of 0 to 5 percent non-white, a third green in the western part of the Tilden zone indicating 5 to 25 percent non-white, and, I believe, the balance is non-functional in terms of housing. It appears to be vacant.

Q. What was the racial enrollment of Jefferson Junior High School in 1960?

A. 46.3 black at Jefferson in 1960 out of a total of 1,406 students.

Q. Doctor, were there other alternatives available from your study of the records of 1960 other than the assignment of the

housing project children to the Hutchins School which was already 96.9 percent black?

A. It appears to me from studying the data that the pupils from the Tilden Elementary attendance area, which is a good deal closer to the Hutchins, had been sent to Hutchins and the pupils who were bussed from the Jeffries Project had been sent over to Jefferson. It would have been more convenient, physically, and also provide greater integration of students. [1500]

[1500] Q. Are there any other alternatives which could have been used which are demonstrated on 109-M?

A. In terms of the total Jefferson Junior High area it would have been possible to send students from the two Southwestern area elementary zones in the feeder pattern. On the extreme west is Kennedy Elementary.

Q. What is shown on the census map for the Kennedy area?

A. In 1960, Kennedy is a little patch of blue representing 25 to 50 percent non-white.

MR. BUSHNELL: Again, if the Court please, I note the objection that the general census population data bears no relation whatsoever to the racial data concerning pupils and I object to this correlation and linkage and assumption that is being used.

MR. LUCAS: I don't think that is true. The statement that it bears no correlation is not supported by the facts. We have been very careful to –

MR. BUSHNELL: I will strike "no correlation," if the Court please, and say the general population data is totally irrelevant to pupil population data.

THE COURT: We have been over that ground before and I think there is a relationship.

Q. Would you continue with your explanation of the Kennedy and Owen School areas?

[1501] A. It would have been possible to send students from Kennedy or from Owen which is the elementary zone immediately east of Kennedy to McMillan Junior High School which is down in the Southwestern district and at that time had an under-utilization of 128 pupil stations having an enrollment of 576 pupils and a

capacity in 1960 of 704 stations. So that either pupils from Owen or from Kennedy, and those are both – Kennedy is 73 percent black student population, Owen was 43.9 percent black student population. If these or some part of these students at the junior high level had been sent to McMillan, that would have allowed space.

MR. BUSHNELL: I will object to this testimony. There is no showing that McMillan was a junior high at that time and in fact I represent to the Court that it was not.

[1502] THE COURT: Well, the question is whether that alternative was available at that time.

MR. LUCAS: I will check the exhibit.

Q. (By Mr. Lucas) Doctor, did you detect in your examination of the data whether or not elementary schools in the Detroit School System serve junior high grades?

A. I'm not certain.

MR. BUSHNELL: May I have that question again?

Q. (By Mr. Lucas) Do any elementary schools in the system serve more than K through 6?

A. Yes.

Q. What grades do they serve?

A. They serve K through 6, in some cases K through 7, in some cases K through 8, and some, I believe, K through 9.

MR. BUSHNELL: What period of time, counsel, are we talking about, '60?

MR. LUCAS: Various times.

Q. (By Mr. Lucas) I show you, Doctor Foster, in response to the inquiry of counsel Plaintiff's Exhibit 78-A,which is the school boundary reports for September of 1959, and I ask you what grades are shown on the map as being served by McMillan?

A. According to the map presented to me, McMillan is marked K through 8 at that time.

[1503] THE COURT: Well, as I understand it then, sir, you are saying now that McMillan was not available at that time as a junior high school?

A. No, I'm saying it was available, and it had capacity. It was a K through 8 school, and it had a capacity for 128 stations.

Q. (By Mr. Lucas) Doctor Foster, K through 9 –

MR. BUSHNELL: And also 7th and 8th grades?

A. Presumably, yes.

THE COURT: Tell me this: Are the high schools run on a three-year or four-year basis?

MR. BUSHNELL: You are asking me, sir?

THE COURT: Yes.

MR. BUSHNELL: Senior high is 10th, 11th and 12th grades.

THE COURT: Three grades? and junior highs are what?

MR. BUSHNELL: 7th, 8th and 9th, ideally.

A. The pattern, your Honor, is very confusing. There are all sorts of combinations, K through 7, K through 8.

THE COURT: So there is no uniformity?

A. Not that I can determine.

Q. (By Mr. Lucas) I believe there has been previous testimony that there were various efforts at various grade structures, and particular housing may have dictated the different grades [1504] at one school or another. The grades you refer to as junior high grades are the grades above the 6th grade?

A. Yes.

Q. Is that the junior high portion you were speaking of with reference to McMillan, Doctor?

A. Yes, and administratively I see that in terms of practices generally in the system that there is not that much problem between establishing a 7th or 8th or 9th grade at any given school, because it is done frequently throughout the system.

THE COURT: Well then, if I understand correctly, it is your testimony that it was available?

A. Yes.

THE COURT: In 1959?

A. Yes, sir. So that essentially what I'm saying, your Honor, is that there appear to be two alternatives in terms of handling

these junior high children. The students in Tilden have instead been sent to Hutchins, and those children could have been sent to Jefferson, or students in the southwestern area which involved Kennedy or Owen could have been sent down to McMillan, and these children gone to Jefferson to take their place.

Q. (By Mr. Lucas) Is the Jefferson School district across from the housing project? [1505]

A. Yes.

Q. It is across the freeway, is it not, Doctor?

A. Yes.

Q. From examining the map do there appear to be passages across to the school? The large map might be of more assistance.

A. I recollect that there are, if I'm not mistaken.

MR. BUSHNELL: If the Court please, we are talking about 1960, '50, something – whether or not there were passages across the freeway at that time. Unless this witness knows, I object to it. I haven't the faintest idea, and I have lived in this city all my life, and this witness from Florida looking at a map is going to tell us on this record whether or not those kids could get across that freeway. Now, this is the rankest of hearsay, and I must object.

MR. LUCAS: Your Honor, I recognize the tradition of school boards of reluctance toward outsiders.

MR. BUSHNELL: The school board's reluctance is toward proving a case on assumption of the entrance of the rankest of hearsay. I don't object to outsiders so much as the game that is being run in this court.

THE COURT: I suspect if the freeway was there at that time there was some way of getting across.

A. Your Honor, there appears to be –

THE COURT: If the freeway wasn't there, [1506] it was probably easier to get across, or maybe not. Maybe it is easier to get across the freeway on the overpasses. But certainly they have enough of them.

A. Your Honor, it is clear from the patterns on the '59 and '60 maps that children were going across, so there must have been some access route.

Q. (By Mr. Lucas) Do you see one on that map, Doctor Foster?

A. There is one on this map I would say two or three blocks below the Jefferson.

Q. Thank you. Doctor Foster, there have been several interruptions, and I think you have completed your example. Is there anything that you were interrupted in on the McMillan example?

A. I think only to say that this is an example of where feeder zones were combined with transportation in order to maintain segregated practices and, to some extent, also the technique of construction, since two new schools were constructed to provide housing for these Jeffries housing persons or students, particularly in the schools that were built for a capacity which I would term generally oversized, as I understand it from the data recommendations to the Detroit system, which indicate that elementary schools would generally be in the area of six to 800.

Q. Where did that recommendation appear, Doctor Foster?

A. This recommendation appeared in the Citizens Advisory Committee [1507] on school needs, I believe 1958, page 199, and these two schools were constructed with the beginning capacity of 1,184 pupils.

Q. Doctor Foster, directing your attention to Plaintiff's Exhibit 18-A, page 136-A therein, would you examine the entry dated July 30, 1957 and read the last sentence?

A. "Of the 2,135 occupied units at Jeffries homes, 56 or 2 6/10 per cent were occupied by white families and 2,079, or 97 4/10 per cent by non-white."

MR. BUSHNELL: The date on that, please, sir?

A. July 30, 1957, for the communication.

MR. BUSHNELL: Thank you.

Q. (By Mr. Lucas) Doctor Foster, in connection with your testimony yesterday about the various techniques utilized to establish segregation or to maintain segregation, can you list which of those techniques in your opinion, if any, were employed in this particular example?

A. I think I just indicated, sir, that construction was one, transportation was one, and changing zone lines or feeder patterns was a third.

Q. Directing your attention, Doctor Foster, to the Burton-Irving feeder pattern, have you made a study of the changes, if any, in that area?

[1508] A. Yes, I have.

Q. Would you describe the situation in 1960 with respect to the Burton Elementary students?

A. Burton is to the southeast of the Jefferson area, an elementary school at that time K through 6. In 1960-61 Burton Elementary students west of Woodward Avenue were assigned to – Woodward Avenue would be the street just at the edge of the green fringe.

Q. The green fringe being on that, on the 1960 census?

A. That's correct, and after that would separate racially the green fringe, representing 5 to 25 per cent non-white population from the oragne area directly to the east, representing 50 to 85 per cent non-white. Students west of Woodward Avenue were assigned to Jefferson Junior High. That would be the students in the Burton to Jefferson Junior High.

Q. Is that the junior high directly across from the Jeffries housing project?

A. That's correct, and students east of Woodward, which would be in the orange area we just referred to, were assigned to Garfield Junior High, which is a little distance to the northeast and in the Northern constellation.

Q. And what does the map show with respect to the non-white population around Garfield Junior High?

A. The entire area around the Garfield, the immediate area around the Garfield Junior High in 1960 was red, indicating an 85 to [1509] 100 per cent non-white population.

Q. What was the pupil population at Garfield at that time?

A. In 1960 the pupil population at Garfield was 907 students, 99.1 per cent of whom were black.

Q. And at Jefferson?

A. At Jefferson the enrollment in 1960 was 1,406 students, 46.3 per cent of whom were black.

Q. Was Jefferson overcrowded or undercrowded?

A. Jefferson at that time had a capacity of 1,277, indicating that there were 129 more students than capacity rated stations.

Q. And Garfield?

A. Garfield at that time had a rated capacity of 1,104 students, indicating they were 197 students underpopulated according to their capacity. So there was space at Garfield on this basis and a lack of space at Jefferson.

[1510] Q. Doctor, from your examination of the data do you have an opinion as to the capacity reasons, if any, for the assignment of the students to Garfield?

A. Capacity figures would indicate they would have been assigned to Jefferson rather than Garfield.

Q. Doctor, what changes, if any, developed with respect to this boundary line following 1960?

A. In 1960-62, the following year, Burton Elementary, which we just discussed, and Irving Elementary, which is the area, the attendance zone immediately north of Burton, the students, the ones west of Woodward in both of the elementary schools were assigned to Jefferson Junior High. The ones east of Woodward in both elementary schools were assigned to a new junior high which opened up in that year, Spain, which is just to the edge of the zone.

Q. What was the enrollment at Spain when it opened?

A. The figures given in the data were 465 students and 100 percent black student population. This was in 1962 data.

Q. What was the capacity listed for Spain?

A. 1296 student capacity.

Q. Do you know of any reason, Doctor, from an examination of the data, why only a portion of the Burton Elementary students were assigned to Spain?

A. No. The data for the schools would indicate that the Spain school [1511] could have housed the entire Burton Elementary attendance area at that level.

Q. Dr. Foster, what was the effect of the assignment of these students first to Garfield, then to Spain Junior High School?

A. In my opinion the effect was to further segregate the Garfield student population and to decrease the number of blacks attending Jefferson which would have an adverse effect on integration in Jefferson. It also, in my opinion, would indicate to the general population that there was a racial dividing line on Woodward Avenue and blacks living to the east of Woodward were to be isolated and contained in the black area and the whites living west of Woodward were to maintain their white status as Jefferson.

Q. What would the racial percentage of Garfield be, did you say?

A. In 1960, 99.1 percent.

Q. Spain when it opened was 100 percent black?

A. That is correct.

Q. Doctor, what is the effect with respect at Jefferson Junior High of the assignment away from Jefferson of the Jeffries Housing Project students and in turn the students living east of Woodward?

A. I am not sure exactly what your question is, but in terms of capacity, moving the entire Burton Elementary zone to either Garfield or later to Spain would have provided space for the [1512] Jeffries Housing people in Jefferson.

Q. Directing your attention, Doctor, to the Vandenberg and Vernor feeder patterns ——

MR. LUCAS: Your Honor, we would like to offer in evidence an overlay of Plaintiffs' Exhibit 109- Q, which is a representation of a portion of the feeder pattern in the schools in the Mumford area.

MR. BUSHNELL: During what period of time?

MR.LUCAS: I think it is taken from the boundary guide books of 1960 —— '59–60.

MR. BUSHNELL: This proposed exhibit deals only with feeder patterns during the school year '59-60?

MR. LUCAS: As represented in the books of '59-60.

MR. BUSHNELL: I understand from Mr. Henrickson this appears to be an accurate representation. We have no objection. This is Exhibit what, sir?

MR. LUCAS: 109–Q.

THE COURT: It may be received.

MR. LUCAS: Might I state for the record the particular boundary lines of those schools as represented on the small overlay, the boundary lines continued substantially the same for several years.

MR. BUSHNELL: Is that a statement of counsel?

[1513] MR. LUCAS: Yes, it is. If there is any objection —

MR. BUSHNELL: I will object to counsel's statement and ask it be substantiated by evidence.

MR. LUCAS: I think the exhibits in evidence do substantiate that. If counsel has any disagreement about it —

MR. BUSHNELL: The burden, if the Court please, is not on the defendant to prove plaintiffs' case. I object to counsel's statement. I ask that it be stricken from the record.

Q. (By Mr. Lucas) Dr. Foster, did you make a comparison of the boundary lines in 1959 of the elementary schools themselves as opposed to the feeder pattern and were there any substantial changes between then and 1962?

A. The elementary attendance area lines?

Q. That is correct.

A. No, sir.

Q. Did you examine the defendants' own exhibits? The boundary guide books for that information?

A. Yes, sir.

Q. Directing your attention to 1962, the Vandenberg and Vernor area, would you tell us what school Vandenberg and Vernor Elementary Schools fed into?

A. Vandenberg and Vernor at that time in '62 -- are you talking [1514] about '62-63?

Q. Let's talk about it in '62, where were they assigned at that time in '61-62?

A. In '61–62 they fed into Mumford. In '62-63 the one on the extreme northwest is Vandenberg, the one east of this is Vernor. In '62–63 they were transferred to the Ford constellation.

Q. From the Mumford to the Ford?

A. That's correct, sir.

Q. At that time what was the racial composition of the Ford constellation?

A. In 1962 the racial composition of the Ford constellation was 1.2 percent black out of a total enrollment of 2,142.

MR. BUSHNELL: If the Court please --

Q. That would be what --

MR. BUSHNELL: (Continuing) Excuse me. That obviously is the high school constellation.

MR. LUCAS: I correct the question. I meant the high school.

Q. I meant the high school, Doctor.

A. I also meant the high school.

Q. I think your answer was for the high school.

A. Yes. The percent black for Ford was 1.2 percent.

Q. What was the enrollment in 1962 at Vandenberg?

[1515] A. In 1962 the enrollment was 474 pupils.

Q. What percent black, Doctor.

A. 0.0 percent black.

Q. At Vernor what was the enrollment?

A. The enrollment at Vernor was 1341 students.

Q. The percent black?

A. 1 percent of the Vernor students were black.

Q. What, at that time, Doctor, was the capacity at Ford?

A. 1962, the capacity of Ford was 2,550 students.

Q. How did this compare with the enrollment?

A. This was 408 students over enrollment. So that there were student stations available in Ford, 408.

Q. At Mumford what was the capacity situation there?

A. The capacity situation at Mumford was 2600 capacity, 3,234 students.

Q. How many excess students did they have over capacity?

A. Leaving an excess of 634 students over capacity.

Q. Were there other students which could have been transferred from the Mumford constellation to the Ford constellation in view of the capacity differences between the two schools?

A. Since there was space at Ford and Mumford was crowded, maintaining a contiguous pattern, the MacDowell Elementary area which is immediately to the east of Vernor, and the Higginbotham Elementary area, which is to the immediate east of MacDowell [1516] and to the northeast, could easily have been transferred or rezoned along with Vandenberg and Vernor into the Ford High School area.

Q. What was the racial percentage enrollment at MacDowell?

A. The 1962 enrollment at MacDowell was 1183 and 48.2 percent black.

Q. At Higginbotham?

A. At Higginbotham the enrollment was 885 students, 99.4 percent black.

Q. Did I understand your suggestion that they could have been rezoned into Ford?

A. I would consider that as a very reasonable alternative which would have been acceptable administratively from a capacity standpoint and which would have improved greatly the status of integration in the two high schools involved.

Q. Directing your attention, Doctor, to 1967-68 school term, was there a change in the assignment of Vandenberg and Vernor in terms of their high schools?

A. In 1967 and '68, Vandenberg Elementary area and Vernor Elementary area were returned from the Ford attendance area to Mumford.

Q. At that time what was the racial composition of Vandenberg Elementary?

A. At that time Vandenberg was 70 percent black.

[1517] Q. Vernor?

A. Vernor was 63.2 black.

Q. What was the composition by that time of Mumford, Doctor?

A. In 1967 Mumford was 78.1 percent black.

Q. The school from which they were taken, what was the composition of that, Ford, I believe?

A. Ford High School in 1967 had managed to remain at the low figure of 4.1 percent–

MR. BUSHNELL: Now, if the Court please, I would ask the Court to instruct the witness that he does not have to editorialize or emote. All he has to do is answer the question.

THE COURT: Yes.

MR. BUSHNELL: Give the figures.

THE COURT: Yes. You should leave that up to counsel, witness.

MR. LUCAS: I think we do enough of it,

A. I beg your pardon. It gets sort of statistically dull occasionally.

THE COURT: We don't want to crowd the profession.

A. In 1967, Ford had 4.1 black students in the high school.

Q. The effect, Doctor, then, of the removal of Vandenberg and Vernor from the Ford feeder pattern into the Mumford feeder [1518] pattern, what was the effect in terms of race?

A. The effect of this move in 1967-68 of the transfer back of the two elementary schools was to increase the segregation at Mumford, to take blacks from the Ford High School and, therefore, increase the segregated pattern there, and, in my opinion, it

reinforced inevitably the perception that Ford would be kept white as a matter of basic policy and that Mumford would be a racially contained isolated high school attendance area.

Q. Doctor, 1967, what could have been done to relieve the racial separation or to integrate the schools in that particular area?

A. Well, in my opinion, instead of moving Vandenberg and Vernor back, they could have remained at Ford because I do not think capacity was that big a consideration especially since the Redford High School at that time I think was something like 900 or 1,000 over capacity. But essentially it seems to me that an excellent alternative at that juncture would have been to consider the rezoning of the four high school areas to the northwest of the city, Ford, Redford, Mumford and Cooley.

Q. How would that have been rezoned?

A. If you look at the total population and racial makeup of these four high school areas at that time the figures I get are for the four schools total, a white population of 8,847 students, a black population of 3,096 students which would have [1519] left, if the schools were completely balanced racially, and I doubt if they could have been that, but they could have approximated that I assume by zoning changes. The average black population, if they would have been balanced, would have been about 26 percent black.

As a matter of fact, from reading the data I believe that is in his report to the Superintendent or the Board in 1967, Mr. Henrickson suggested part of this possibility, which was, I believe, to involve only Ford and Mumford. It is my opinion that if all four schools would have been involved in such a redistribution it would have worked out even better than Mr. Henrickson's very able, I think, and excellent sugestion.

Q. I will show you Plaintiffs' Exhibit 138 and direct your attention to page 8 of that exhibit. I will ask you if that is the recommendation by Mr. Henrickson to which you refer?

A. Yes, the section in Mr. Henrickson's report dealing with Regions 4 and 5.

[1520] Q. What is the date on that, sir?

A. The date on this is January 5, 1967.

Q. From your examination of the data, was any such change made in 1967, '68 or '69?

A. I do not believe so.

Q. Is there any similar ——

MR. BUSHNELL: Excuse me, sir. What is that exhibit number?

A. 138, sir.

MR. LUCAS: That, Mr. Bushnell, was part of the racial count we separated and made a separate exhibit.

MR. BUSHNELL:: I was just wondering if it had been introduced yet.

MR. LUCAS: Yes, it has.

MR. BUSHNELL: Thank you.

Q. (By Mr. Lucas) Doctor, with reference to 1967, '68 and '69, does your examination of the boundary lines indicate whether or not any such change had been made?

A. No.

Q. Is there any similar change that was proposed for adoption by any Board of Education since that time?

A. It is my understanding that the recommendation of a year ago known as the April 7th Plan would have solved the reorientation of some of these, the northwest district to an east-west [1521] orientation rather than a north-south for their boundaries.

Q. Doctor Foster, can you step over to this other map, the 1970 census, Plaintiff's Exhibit 136-C? Would you examine the overlay of the April 7th high school zones which has been admitted as Plaintiff's Exhibit 143-A? Tell me, can you illustrate both from your recommendation and Mr. Henrickson's recommendation as to the methods to be utilized?

A. Well, in terms of the change ——

Q. Doctor, could you step back here? I think the Court could see it better.

MR. BUSHNELL: If the Court please, as to the last question I do object to the form unless we have this witness testifying that he is adopting Mr. Henrickson's recommendation and that that is

what he is testifying to, or to the contrary, he is testifying as to his own recommendation or with respect to his own recommendation. It is the mixture of the two that I object to, the form of the question.

THE COURT: Well, I'm sure he will tell us which is his and which is Mr. Henrickson's. I don't see any reason why he can't tell us both separately.

MR. BUSHNELL: So long as they are identified.

THE COURT: Yes.

MR. BUSHNELL: All right.

[1522] Q. (By Mr. Lucas) Go ahead, Doctor Foster.

A. You are going to have to start over. I'm lost.

THE COURT: Why don't you first tell us what Mr. Henrickson recommended? Outline it on the map for us.

A. Mr. Henrickson recommended that the Mumford and Cooley districts be revised to elongate them along coach lines, east and west essentially is the way I understand it.

Q. (By Mr. Lucas) By coach, do you mean bus routes? Do you understand that to mean bus routes?

A. Yes, public transportation routes, bus routes. So, he would have effected — it is very difficult to illustrate this on this map, because this April 7th Plan is a variation of that principle of that theme. But it is not specifically related to Mumford and Cooley.

THE COURT: I see.

Q. (By Mr. Lucas) And your recommendation, Doctor?

A. My recommendation would have been in 1968 at the time that Vandenberg and Vernor were rejoined to Mumford to take all four high school areas, Redford, Cooley, Mumford and Ford and rejoin them generally with an orientation towards east-west patterns rather than north-south in such a way that the student population in all four schools could have been relatively stabilized racially and also in terms of student capacity, [1523] because for the past several years Redford has run around 900 to 1,000 over capacity. They have all run over capacity, but not to that great extent. Now, I think the Court should be aware that I'm not

stating specifically what should have been done, but only an orientation to what might have been done as an example of rezoning which would have stabilized the racial situation at that time.

Q. Does the April 7th plan, Doctor, deal with Mumford in the same way that you would recommend consideration be given?

A. The April 7th Plan, as I understand it, does not vitally affect Mumford or Ford, but primarily Redford and Cooley.

Q. Directing your attention, Doctor, to the Higginbotham area, have you made an analysis of the assignment patterns, the boundaries in that area in 1960?

A. Yes, I did.

Q. Would you describe the schools which you examined and your analysis, please?

A. In 1960 the Higginbotham Elementary School to the extreme north of the Mumford constellation was a K through 8 school. It had an enrollment of 935 with a black population of 99.4 per cent, a capacity of 880 students, which was 55 over student capacity. To the immediate west and southwest of Higginbotham the MacDowell Elementary School in 1960 had an enrollment of 1,231 students, a black student population of 35.3 per cent, [1524] a capacity of 1,312 stations, reflecting an under utilization of 81 student stations. To the immediate east of the Higginbotham area is the Pasteur School which, in 1960, had an enrollment of 1,290 students, 23.8 per cent of whom were black, a capacity of 1,120 stations, and it was over subscribed by students 170 places. There is one other factor which is considered in thinking of these three schools at that time, and that is that 118 pupils were being bussed to Higginbotham from the Angell Elementary area, which is down in Center City, a considerable distance.

Q. Doctor, would you examine Plaintiff's Exhibit 63 which is entitled Transportation to Relieve Overcrowding, and see if you can locate that particular list?

A. This particular list is dated February, 1961 which would comprise the '60–61 school year. There are 186 pupils transported

from Angell, which is the sending school, to Greenfield Park, which is over in this area in the Pershing constellation. There were 118 students transported from Angell to Higginbotham.

Q. Would you step to the large map, Doctor, and show us that route?

A. Angell is in the Northwestern constellation. The route would be from Angell northward to Higginbotham, and the second group transported would be from Angell up to Greenfield Park, which is in the Pershing zone.

[1525] Q. All right, sir.

A. This exhibit indicates that the Angell School was 98.7 per cent black which, of course is pertinent to our testimony. Now, an analysis of the situation considering the three elementary attendance areas, plus the fact that 118, we assume either all black or close to it from the data, students from Angell to Higginbotham, indicates that you have an all black school within one percentage point bordered by two predominantly white schools, and the situation is further aggravated by the transportation in of black students from Center City.

Q. Are there any white schools from your examination of data, Doctor Foster, between Angell and Higginbotham which had capacity at that time?

A. Yes, there were several which were a good deal closer to Angell than Higginbotham. The effect of this sort of zoning pattern was to provide segregated student ratios at all three of the elementary schools, and in terms of things that could be done or could have been done at that particular time to correct the segregated situation, it is my opinion that, first of all, the students being bussed from Angell could have been dropped off at any number of places on the way to Higginbotham, schools which had the space and had a better racial composition for this sort of input. This having been done, zone lines could have been redrawn at these three schools to have [1526] approached a racial balance situation which , in my opinion, would have helped to stabilize the situation at that time. This would have also assisted in the overcrowding at Pasteur and a couple of classrooms extra at Higginbotham.

Q. Do you have an opinion, Doctor, as to the perception created by the maintenance of the Higginbotham School under those circumstances, including the transportation of black students from Angell into it?

A. Well, it is obvious that if you transport black children past white schools to an all black school that the community is going to perceive this as a segregated intent, a segregated action. If you have a boundary situation which isolates and enforces black students to a particular area when the boundary lines could be changed to effectuate a better pattern racially, then it seems to me that community perception would also be that the school is not doing what it could in terms of integration and equal opportunity.

Q. Doctor, from your examination of the data in 1960 are there any administrative reasons, any administrative problems which would indicate to you a reason why this boundary was maintained rather than drawn in some other fashion?

A. In terms of school capacity there are none, no.

Q. Are there any administrative reasons that you know of, Doctor, which would mitigate against changing these lines?

[1527] A. No, sir.

Q. Directing your attention, Doctor, to the "Holly" School, can you tell us if you made an analysis of that particular example?

THE COURT: Before we proceed with that, we had better take a short recess at this time.

(recess taken)

[1528] THE COURT: You may proceed.

Q. Dr. Foster, I would ask you about the Hally example. I think I misspoke myself and said "Holly" It's actually Hally.

A. The Hally Elementary School is in the Mumford constellation. The situation here is very similar to the Higginbotham just described in testimony. In 1960 Hally Elementary School had an enrollment of about 1180 students, was 94 percent black, it had a capacity of 1088, indicating 92 percent more students were enrolled–

Q. 92 percent, Doctor?

A. I beg your pardon, 92 more students were enrolled than capacity. Immediately to the north of Hally we find the Hampton Elementary School which in 1960 had an enrollment of 908; percentage black population of .1 percent; the capacity of 992 students, indicating room at Hampton was available for 84 additional students.

Immediately to the west of Hally we had Fitzgerald which in 1960 had an enrollment of 1322 students, percentage black 19.6, capacity of 1472, indicating 150 pupil stations unused.

To the northwest of Hally we had the Bagley Elementary School with 871 students enrolled in 1960, completely white, a capacity of 1,056, indicating unused pupil stations of 185.

[1529] So we find a predominately black school with 94 percent black surrounded by either all-white schools or nearly all-white schools. The effect of this, in my opinion, was that you had segregated ratios at all of these schools in the cluster I just discussed, Hally, Hampton, Fitzgerald and Bagley and in addition there was overcrowding at Hally of 92 students and there was under-utilization of student stations at Hampton, Fitzgerald and Bagley.

Q. Dr. Foster, from your examination of this area at that time were there administrative techniques available which would have relieved the overcrowding and also reduced the segregation in those schools?

A. In my opinion zone lines, zone boundary lines could have been redrawn to take care of the overpopulation at Hally and to effectuate a better racial ratio or balance in all four of these elementary schools.

Q. Using, for example, two of the schools, Doctor, could the technique of pairing have been used?

A. Yes, but–

MR. BUSHNELL: Objection as leading, if the Court please.

THE COURT: He may answer.

A. Quite easily, but I think just changing zone lines would have served to do the same thing. The more recent technique of [1530] pairing could have been used or clustering.

Q. What is pairing, Doctor?

A. Pairing is based on what we call the Princeton plan, generally, where you take two schools of similar grade structure or close to it, and an example would be two K through 6 schools. If they had fairly reasonably close capacities in enrollments and quite divergent racial mixtures, you would combine them into a paired attendance area. You could put grades K through 3 in one school and grades 4 through 6 in the other school and come up with a desegregated balanced student enrollment.

[1531] Q. Doctor Foster, from your examination of the schools in this area did you determine the grade structure at the elementary level?

A. In 1960, according to the data that was available, there were in the Mumford constellation something like eight schools which were structured organizationally on a K through 8 pattern. These included Vandenberg, Vernor, MacDowell, Higginbotham, Pasteur, Schulze Elementary, Hampton, and Hally.

Q. Was there any school which was designated as a junior high school in that area?

A. I do not believe so at that time.

Q. Doctor, there were separate junior high units in other areas of the city?

MR. BUSHNELL: In 1960?

MR. LUCAS: Yes.

A. Yes.

Q. (By Mr. Lucas) Doctor, from your studies of the data has the Detroit School System taken the existing elementary schools or K through 8 schools and converted them into junior high units?

A. This is my understanding that it has, yes.

Q. Would the conversion, Doctor, of any of the elementary or K through 8 units in the Mumford area into a junior high school have resulted–would it have affected the desegregation of [1532] students in those grades in the Mumford area?

MR. BUSHNELL: As I understand it, we are still talking about 1960?

MR. LUCAS: That's correct.

A. Yes. Taking one of these K through 8 units that I have read, the list of which I have read, and converting it to a junior high or middle school situation would have furthered desegregation in that you would have had two of the grades drawn away from the elementary attendance areas and combined in a single attendance area, whichever one would have been chosen, thereby providing a much greater mix racially of the students who were fed into that school.

Q. Suppose you picked one of the schools, for example the Fitzgerald School, and made it a junior high, or any of the other large elementaries. This would have required removing the elementary students from that school, is that correct?

A. That's correct.

Q. Would that have tended in that particular area in 1960 to increase the desegregation at the elementary level?

MR. BUSHNELL: Objection. Leading.

THE COURT: Well, it is, but it is obvious.

A. The obvious answer is yes.

Q. (By Mr. Lucas) Thank you. Doctor Foster, do you have an opinion with respect to the maintenance of both the Hally and [1533] Higginbotham Schools in the Mumford area during the 1960 period and their racial composition and boundary lines as shown on the exhibit?

MR. BUSHNELL: Could I have that question again?

Q. (By Mr. Lucas) Do you have an opinion, Doctor Foster, as to the effect of the maintenance of the Higginbotham and Hally Schools in their racial compositions and with their zone lines as shown on Exhibit 109-Q in 1960?

A. Yes. My opinion is that the maintenance of this boundary line pattern in the two schools and the surrounding elementary schools tended to maintain and increase the segregated attendance pattern in all of the schools named in my previous testimony.

Q. Doctor Foster, directing your attention to Plaintiffs' Exhibit 109-N which has been previously admitted into evidence, would you make an examination of the boundary line changes and feeder patterns with respect to Jackson Junior High?

MR. BUSHNELL: Just a detail, Mr. Lucas. This is N for Nancy?

MR. LUCAS: Correct.

MR. BUSHNELL: I I don't believe that one has been offered. I have no objection to it. This is just to tidy up the record.

MR. CALDWELL: Your Honor, Mr. Bushnell [1534] was not here the day it was entered, but it was entered.

MR. BUSHNELL: Okay, thank you. This is the Jackson Junior High feeder pattern?

A. Yes.

MR. BUSHNELL: Thank you.

A. Jackson Junior High is situation in the Southeastern district, and what is involved in the feeder pattern also flops over into the Finney district essentially, or the Finney constellation. In the 1964-65 school year the Clark and Stellwagen Elementary zones were moved from the Jackson Junior High feeder pattern and were made into K through 8 schools with their 9th through 12th grades going on to Finney Senior High School.

Q. (By Mr. Lucas) That is the two elementary schools in the eastern portion of the exhibit area, is that correct?

A. To the northeast and east. At the top in the northeast corner is Stellwagen. Immediately beneath that is the Clark Elementary zone, and that is due east of the Jackson Junior High School, and the red line on Plaintiff's Exhibit 109-N indicates the wall, the boundary that was put up–

MR.BUSHNELL: If the Court please, I object to this characterization by the witness and ask that that be stricken.

[1535] Q. Doctor, just describe the boundary.

A. The boundary line between the Stellwagen and Clark Elementary zones and Jackson Junior High is here. (Indicating)

Q. What was the racial composition in 1960 of Stellwagen and Clark?

A. Stellwagen had an enrollment of 600 students, .5 percent of whom were black. Clark had an enrollment of 1,072 students, .2 of a percent of whom were black.

Q. What was Jackson Junior High at that time?

A. Jackson Junior High had 1,655 students, 22.5 of whom were black.

Q. What was the change in the boundary lines again in the feeder pattern at least?

A. The boundary line was moved from the eastern portion of Stellwagen and Clark to the western border of Stellwagen and Clark.

Q. Would you step to the large map, please, Doctor? It may be a little clearer there.

(The witness proceeded to the map.)

Q. The large map is Plaintiffs' Exhibit 137-C for the high school attendance area, junior high school attendance area. Underneath that is 137-B.

Can you trace on the large map, Doctor, where that boundary was as of 1964?

[1536] A. Prior to the change?

Q. Yes.

A. Prior to the change that was just recounted the boundary line was on the eastern end of Clark and I believe it came in about six blocks or so and went north to the northern boundary of Stellwagen. This eastern part of Stellwagen was later added to it. I believe that street was an extension of Outer Drive that went south.

MR. BUSHNELL: Chandler Park Drive, I believe.

A. Outer Drive goes east and then goes south.

Q. What was the effect of the change in the Stellwagen and Clark Schools from the feeder pattern, Doctor?

A. The effect was to remove the almost completely white attendance, elementary attendance areas of these two schools from a school which was 22 percent black at that time, and move them into a situation which was entirely white.

Q. What happened to the junior high students?

A. The junior high students remained at the seventh and eighth grade in these two elementary schools and from the ninth grade moved on to Finney.

Q. Was Finney a junior high at that time?

A. I believe so, yes. I think it went to a senior high–no, it couldn't have been. It was a 9-12, so it would have had [1537] to have been a senior high.

Q. All right.

A. Further, the effect of this was to isolate the blacks and to make them more segregated in the Jackson Junior High.

Q. How close does the new boundary line pass to Jackson Junior High as it appears on the map, Doctor?

A. Immediately to the east I would guess at the most a block or so from the map.

Q. The new zones then of Jackson Junior High is located on the border of the zone?

A. Just within the eastern border, that's correct.

Q. Would you describe the other changes in the Jackson Junior High boundary?

A. In 1968-69 the Keating Elementary School was moved from the Jackson Junior High attendance area to the Foch Junior High.

Q. Where is the Keating School?

A. On this map the area marked by the yellow line to the west of the yellow line, on the south border of the Jackson area.

Q. What does the 1970 racial census map show underneath there in terms of color?

A. The color is at least half orange, representing 50 to 85 percent non-white. It is probably a third blue, representing 25 to 50 percent non-white and one-sixth green representing 5 to 25 percent non-white.

[1538] Q. Can you describe, Dr. Foster, the yellow boundary, eastern boundary as it now appears with the change in relationship to the non-white population?

A. Of Keating?

Q. Yes.

A. When overlaid against a 1970 census map the northern boundary line is identical with a change in racial population content from blue to orange. On the eastern border it is nearly identical with the change from orange, representing 50 to 85 percent to green, representing 5 to 25 percent, and on the southern and southeastern areas the line goes through a blue area representing 25 to 50 percent, and then is identical to the boundary between a green area on the west and a blue area on the east.

Q. Does the Keating area as described by the perimeters include all or almost all of the orange area represented on that map?

A. It would include all but a little corner, a very little corner in the southeast section.

Q. What is the enrollment in Keating, Doctor?

A. The enrollment in Keating in 1968 was 1946 students, 88 percent of whom were black.

Q. Doctor, would you name the elementary schools that appear to the east of that boundary?

A. The elementary schools that appear to the east of the Keating [1539] boundary at that time were Guyton–

Q. What was its enrollment?

A. Its enrollment was 1166 with 11.6 percent black population. Immediately north of Guyton was Ives Elementary which in 1968 had an enrollment of 567 and a black population of 2.6 percent.

Carstens, which is a little east, but mostly northeast of the Keating area in 1968 had a population of 1844, a black percentage of 19.6.

Q. Doctor, referring to the Stark, Guyton, Keating, Ives and Carstens elementary zones, do you have an opinion as to what, if anything, could have been done in terms of restructuring those boundaries which would have desegregated those schools?

A. Well, I don't believe I mentioned Stark at this time, so perhaps I should.

Q. All right, sir.

A. Start was a new elementary school established in 1969.

Q. What was its population, pupil population?

A. Its location is just on the edge of the Keating boundary which was re-drawn at that time. Its enrollment was 822, its percentage black was 98.4 per cent.

Q. It was opened in the 1968-69 school year?

A. I believe 1969-70.

Q. All right, sir.

[1540] A. To answer your earlier question, it is my opinion that these schools in the southern area of the Jackson Junior High zone could have been rezoned again in east-west orientation for their boundaries rather than north and south, desegregating to a much greater degree the Guyton, Keating, Stark, Ives and Carstens Schools.

Q. Dr. Foster, you stated that Keating was taken out of the Jackson Junior High zone. What was the racial composition of Keating?

A. Keating in 1968 was 1946–I beg you pardon–was 88 percent black.

Q. The population of Jackson Junior High where it previously fed?

A. 41.3 percent black.

Q. Where was it reassigned?

A. Keating was reassigned to Foch Junior High which is west of the Jackson attendance area.

Q. Its composition, racially?

A. In 1968 Foch had 1756 enrollment, with a percentage black of 89.6.

Q. Dr. Foster, do you have an opinion as to the effect of such a reassignment?

A. Yes. I think the move essentially increased the segregation of Foch. It increased the segregation of Jackson. It made [1541] for a movement which contained the greater black population into the area to the west of the Jackson zone.

Q. Would you describe, Doctor, the Jackson Junior High attendance zone geographically speaking as it remained after these adjustments?

A. You mean which schools it enclosed?

Q. No, just describe it in terms of north, south, east or west. Is it a wide zone, narrow zone, that kind of geographic term?

A. Generally it is a rather narrow strip zone which runs northwest and southeast.

Q. What is the predominant characteristic of the zone or the area to the west of this strip zone, Doctor?

A. According to the 1970 census map, almost the entire area west of the Jackson boundary is orange, which is 50 to 85 percent non-white, or red, which is 85 to 100 percent non-white, except for a small patch of blue in the southwest corner which is 25 to 50 percent non-white.

Q. Does the western boundary of Jackson, with the exception of the carve-out of Keating run in a reasonably straight north-south direction?

A. I would say reasonably so.

Q. Would you step to the large map again, Doctor.

(The witness proceeded to the map.)

Q. The junior high overlay, Plaintiffs' Exhibit 137-B, shows the [1542] junior high boundary as it presently exists for the Jackson Junior High zone. Would you first of all locate Jackson Junior High and then trace its western boundary. Step back so the Court can see you.

A. In the 1970 map, Jackson Junior High is located at this point west of its eastern boundary about a block. The western boundary of Jackson is represented by this yellow line including to the north as far north as Goodale Elementary, Hamilton, Hosmer. (Indicating on the map.)

[1543] Q. Does the zone actually go up there?

A. I beg your pardon. The northern most point is Hamilton Elementary. The line cuts across the Zachariah-Chandler Park to a northeast direction, and the northern boundary is, I believe Edsel Ford Expressway.

Q. And, Doctor, the demographic data which is Plaintiff's Exhibit 2 which also reflects the 1970 census shows an apparent inclusion of a substantial strip of orange, indicating 50 to 84.9 per-

cent non-white on the western fringe of the Jackson Junior High zone. Would you examine the map and indicate the areas, the populated areas and what appears on that western boundary in accordance with that map?

MR. BUSHNELL: I object to counsel's characterization of population data as demographic data. I have no objection to it being referred to as a population data, but demographic data includes a great spread of information concerning people.

Q. (By Mr. Lucas) Go ahead, Doctor. Answer the question.

A. As I understand your question, sir, the orange area to the west of the Jackson Junior High area is, to a large extent, as near as I can determine, unpopulated, because the map states that Mansfield makes up a portion of this. There is apparently a railroad arrangement to the south, the Zachariah- Chandler Park to the north, and there is a concentration of [1544] population colored orange known as the Joseph Stringham Court Parkside Homes. Except for this portion in the northwest corner, the area which is underlaid by the orange color is largely non-populated, I would assume.

MR. BUSHNELL: I would stipulate that that is essentially industrial property out there, your Honor.

Q. (By Mr. Lucas) Doctor, then does the actual boundary in terms of residents and pupils – I think it is called Conner Street – the opposite boundary of Jackson Junior High zone, actually the Conner area with the exception of the Parkside Homes which you have indicated?

A. It would fall along the Conner Avenue or Street and to the north would include the Parkside Homes, yes.

Q. And, Doctor, in terms of the non-white census data as shown on the 1970 map, Plaintiff's Exhibit 2, can you tell me what the population is on either side of the actual attendance boundary?

A. On the eastern side the population in the northeast would be white, representing zero to 5 per cent non-white population. The area representing the Joseph Stringham Court Parkside Homes would be orange, — I beg your pardon. This is to the east I'm

talking about now. So, I will leave that for the west. The line then would come along Warren and proceed south on Conner. The area to the east at that point would be green, [1545] and the Osborn attendance area, representing 5 to 25 per cent non-white, it would continue south to it. The eastern portion would be blue, representing 25 to 50 per cent non-white.

Q. And the other side of the actual boundary to the west is not in the Jackson Junior High zone. What is that, Doctor, to the west?

A. Are you speaking of this open area?

Q. No, I'm talking about the next populated area to the west.

A. The Keating area?

Q. No, to the west.

A. I'm sorry.

Q. Immediately to the west of the area you were just describing, Carstens, the blue area here.

A. The color to the immediate west of the zone I just described, Carstens, is orange, representing 50 to 85 per cent non-white. Shall I continue?

Q. Yes.

A. Going farther south, the eastern boundary of Jackson is represented by a green area, representing 5 to 25 per cent non-white, and finally a blue area, both of which are in the zone, the blue area representing 25 to 50 per cent non-white.

Q. Doctor, would you trace the yellow boundary? Examine the map and see if that appears to be a railroad track that the boundary goes down to the west of what has been stipulated as an [1546] industrial area. Let me lift the map a little bit. It is kind of hard to see.

A. I believe it does. I believe it is the Detroit Terminal Railroad Line.

Q. Does that line continue further down, Doctor? Does it go all the way down toward the --

A. It appears as though it turns right at about Vernor Highway and goes over and splits. It continues south.

Q. And does the line go straight through the Stark, Keating, Lingeman area, the railroad line?

A. Yes, it appears to branch off and veer westward a bit and go through the Keating-Stark area.

Q. Does it serve as a boundary between these areas, from your examination of the map?

A. Between which areas?

Q. Between Stark, Keating, Lingeman area?

A. I believe it does, yes.

Q. All right. Does the Jackson Junior High boundary continue to follow that same line, or does it change?

A. At a point, Jefferson Street or whatever it is, the Jackson boundary quits going south and turns east.

Q. Is that the area you previously described as the Keating area?

A. That's correct.

Q. Thank you, sir.

[1547] MR. BUSHNELL: For the record, might we note that Jefferson Avenue is an eight lane artery?

MR.LUCAS: All right.

Q. (By Mr. Lucas) Doctor, directing your attention to Plaintiff's Exhibit 109-0 which has been put in as an overlay over 109-A and the Cleveland Junior and Nolan Junior High Schools, have you made an analysis of the boundary attendance pattern changes in that area?

A. Yes, I have.

Q. Would you tell us what the percentage composition was at the Nolan Junior High School in 1960?

A. In 1960 the attendance at Nolan Junior High School was 1,609 pupils, 16.1 per cent of whom were black.

Q. All right. And the Cleveland Junior High School?

A. The Cleveland Junior High School in 1960 had an enrollment of 1,553 students, 77 per cent of whom were black.

Q. I notice, Doctor, on the exhibit a jagged line in what is the

Courville Elementary area. Have you examined that line to determine how it was utilized?

A. Yes. The line cuts across the Courville Elementary zone from the south in sort of a stepladder progression to the north-east border.

Q. And what do the students in the north of that border, what junior high did they go to?

[1548] A. The students in the north or really the northwest of the border were assigned in 1959–60 through 1961–62 to the Nolan Junior High.

Q. And to the south?

A. The students to the southeast of the split line were assigned to the Cleveland Junior High during that period.

Q. Cleveland was 77 per cent black, and Nolan 16.1 per cent black, is that correct?

A. In 1960, yes.

Q. Doctor, in examining the 1950 census data can you give us what the non-white population was of the zone as it was split?

MR. BUSHNELL: I'm going to object to the use of the 1950 census data when the testimony goes to the '59-60 school year attendance lines. The 1960 census data is available.

MR. LUCAS: We will get to the '60 census, also, your Honor.

MR. BUSHNELL: It is irrelevant and immaterial, the 1950.

THE COURT: Well, tell me, were these attendance zones in use in 1950?

MR. LUCAS: I don't know that they were in use in 1950. I know that many of the boundaries were not available, if I recall correctly. But, the information [1549] indicates that a number of these did predate 1959 when we first had them. I think it is relevant to see the change in the area. What weight the Court might give it is certainly another matter.

THE COURT: Let me follow this. You have no information really about the attendance areas or zones as of 1950, do you?

MR. LUCAS: No, sir.

THE COURT: And there were none or none have been available?

MR. LUCAS: My understanding, your Honor, is that there were no high school zones available to the central office at that time. There may have been elementary zone maps, but in any case they are not presently available to the staff. No one knows where they are or if they still exist, and I'm satisfied that a truly diligent search was made for them.

MR. BUSHNELL: As far as we know, your Honor, there were none. There might have been, but as far as we know there were none.

MR. LUCAS: But as far as we know there were elementary maps, but no one has been able to locate them. What was not available at all was high school maps.

MR. BUSHNELL: Well, there is some indication [1550] that there were attendance areas in the early years, but whether they were mapped or not we don't know, and we certainly have no information that we can presently find that describes them by map or what have you.

THE COURT: Well, the connection is rather tenuous, but it does demonstrate the change in the racial complexion of the area. So, for that purpose I will take it.

MR. LUCAS: All right, sir.

MR. BUSHNELL: May I, for the record, sir, point out again that we are using 1950 census data information for this question to be applied to attendance lines that were in use ten years after this data on this exhibit was collected.

THE COURT: Yes.

MR. BUSHNELL: Thank you, sir.

THE COURT: I understand that.

MR. BUSHNELL: I know you do. I'm speaking for the record, sir.

Q. (By Mr. Lucas) Do you recall the question, Doctor?

A. Yes. Keeping in mind the shortcomings, the line represented in 1960 as against the 1950 census data indicates that to the southeast of the line in the Courville Elementary zone the area was perhaps 75 per cent orange, indicating a population of 50 to 85 per cent non-white. The balance was blue, indicating 25 to 50 per cent non-white. North of the line in the [1551] Courville area the

major portion of the area was blue, indicating 25 to 50 per cent non-white. There is a little patch of orange immediately north of the line, indicating 50 to 85 per cent non-white. In the western portion of the Courville zone there is a white area, representing zero to 5 per cent non-white.

Q. Directing your attention to the 1960 census, Plaintiff's Exhibit 136-B, would you describe the same area, Doctor?

A. The same area according to the underlay of 1960 census data indicates that all of the southeastern area southeast of the dividing line in the Courville zone except for a very small segment was orange, representing 50 to 85 per cent non-white. A small segment was red, representing 85 to 100 per cent non-white.

Q. And that fed into what, Doctor?

A. This fed into the Cleveland Junior High School immediately to the southeast.

Q. And it was what per cent in 1960?

A. Cleveland was 77 per cent black in 1960.

[1552] Q. And the northern portion of the Courville zone?

A. To the north of the dividing line in Courville you have over half of the area orange representing 50 to 85 percent non-white, a portion was red in the northeast corner, 85 to 100 percent non-white and on the western edge a strip of white representing 0 to 5 percent non-white.

Q. Any of that 0 to 4.9 non-white area assigned to Cleveland?

A. The part that is in the Courville zone?

Q. Yes, sir.

A. No, sir.

Q. Where was the northern portion of the Courville zone assigned?

A. The northern portion was assigned to the Nolan Junior High School to the northwest.

Q. Which was what percentage black?

A. Nolan in 1960 was 16.1 percent black.

Q. Doctor, did you examine the schools in the surrounding area; first of all, let me ask you what capacities were at Nolan and Cleveland and whether or not they were overcrowded or had excess space?

MR. BUSHNELL: 1960?

A. Yes.

MR. LUCAS: Yes.

A. In 1960, Nolan had a capacity of 1427 as against an enrollment of 1609, being overpopulated by 182 students. Cleveland had [1553] a capacity of 1418, an enrollment of 1553, being overpopulated by 135 students.

Q. Dr. Foster, you previously testified that students were being brought into this area from another area. Can you tell me where they came from and to what school they were assigned?

A. At this time 186 blacks were coming from Angell, which is here in the northwestern area, northeast to the Greenfield Park Elementary School, which is in the southwest sector of the Nolan Junior High zone.

Q. What was the enrollment and percent black at Greenfield?

A. In 1960 Greenfield Park had an enrollment of 1605 students, 11.9 percent of whom were black.

Q. What was its capacity?

A. 1592 capacity.

Q. Was the school overcrowded or underutilized?

A. It was about even. It was 13 students overcrowded.

Q. Doctor, did you study this feeder pattern in the schools, the other elementary schools in this area, and, if so, do you have an opinion as to an organization pattern in that area which could have been used to desegregate those schools?

MR. BUSHNELL: Well, that is leading.

THE COURT: No, he may answer.

A. Yes. I think there is some. I could give some examples of some alternatives which might have been effectuated to ease [1554] the segregated status of Nolan and Cleveland. First of all–

Q. Let me interrupt you and ask, you have not made any study and you are not recommending a specific plan, as I understand it?

A. No, not at all. This is, as it were, not a present situation but in the past and I am merely giving examples of things that might have been done to promote desegregation.

Q. All right, sir.

A. Generally speaking, if you work on any kind of a desegregation plan or study you have to consider the system as a whole. You can't isolate a particular school and its neighbor and come up with a complete answer unless you have all of the data at any given time. On the other hand, it is quite obvious, I think, with some experience that you can see things in looking at the data and maps that can be rather readily accomplished.

First of all, if the students from Angell had not been coming to Greenfield Park and we ascertained they could have gone elsewhere with improvement in segregation, to several white schools.

Q. You mean desegregation?

A. Yes.

Q. All right, sir.

A. Sorry. This would have given more space in the area to which [1555] we are now paying attention. Greenfield Park, without these children, could have been zoned into the Cleveland area, giving it a considerable number more of the white students. All of Courville which is the bifurcated zone that we have been discussing could have then been zoned to Nolan, giving it a considerably greater number of black students.

Another possibility would have been to zone Atkinson, which is immediately east of Courville, into the Nolan constellation or Nolan attendance area.

Q. What was the enrollment at Atkinson and racial percentage?

A. In 1960 Atkinson had an enrollment of 827 with a black percentage of 98.4.

Q. Do you know which junior high school it fed into?

A. At that time it fed into Cleveland.

Q. Is it about equidistant between Cleveland and Nolan?

A. I would say so, yes, sir.

Q. All right. Go ahead.

A. Other possibilities to effectuate desegregation in this area at the time - Greenfield Park, which is in this section, and Courville immediately to the east are what I would constitute or consider a fine example of two schools which could be paired or zone lines could be redrawn by what we call reverse gerrymandering in such a way as to racially balance these two schools which have or which had at that time practically [1556] identical enrollment and quite opposite racial patterns.

Another possibility, I believe, would have been to re-draw the Davison and White zone lines. Davison is an elementary attendance area in the Cleveland district which based on the 1960 census data is entirely orange, representing a population, general population of 50 to 85 percent. The Davison student population at that time was 89.6 percent black.

Sitting immediately east of Davison is the elementary zone known as White. In the 1960 enrollment White had 1,096 students, 40.2 percent of whom were black. Again it would be possible to redraw zone lines or if preferred, to pair these two schools in such a way as to affect a much better segregation status approaching racial balance.

Q. Would this have any effect on the racial identifiability of those schools in this area, Doctor?

A. In my opinion the population, racially, is identified in such a way that racial identifiability could have been largely eradicated at that time.

Q. Doctor, your examples have been given in reference to the existing feeder patterns between Cleveland and Nolan in that area. Directing your attention to the Atkinson School, which you have described as 98.4 percent black, are there areas [1557] from the 1960 census to the north of that particular school which have a different designation in terms of non-white population?

A. There are such schools in the Osborn constellation. I believe the one immediately north is VanZile. To the east of that is the Law Elementary School, both of which from the census data,

population appears to be between 0 and 5 percent in the 1960 census. These also could have been incorporated into the Nolan or the Cleveland attendance areas in such a way as to effectuate better racial balance.

Q. Doctor, do you have an opinion as to the effect of the splitting of the Courville elementary zone between the Cleveland and Nolan Junior High Schools?

A. Simply that it tended to make Nolan whiter and Cleveland blacker.

Q. Doctor, do you have an opinion as to the perception of the splitting of such an elementary zone in that manner in terms of the other schools?

MR. YOUNG: Objection, your Honor. I don't believe the witness is qualified as an expert in community perception.

THE COURT: He may answer. Objection overruled.

A. My opinion is that the perception of the community would have [1558] been such that the line that was drawn by the School Board in an attempt to maintain –

MR. BUSHNELL: Now, if the Court please, the witness here is testifying to what the School Board intended or attempted. There is absolutely no evidence. The Court is permitting him to testify as to community perception, but his answer is to ascribe intent and purpose to the Board of Education.

THE COURT: Yes.

MR.YOUNG: Which your Honor ruled yesterday could not be testified to by the witness.

MR.LUCAS: I think what he is saying is it could have been perceived as intended. I think their objection yesterday went to whether or not he could state what was their purpose. I think the Court ruled on that issue. Whether or not actions have effects on people and one of those effects is that it is perceived to be done in a purposeful manner, I think that is entirely different from saying that it was done in a purposeful manner.

MR. BUSHNELL: That is argument, if the Court please. Mr. Lucas can make that argument in his brief.

THE COURT: I think the witness should confine himself to his assessment of the perception of the community without relation to the School Board action and [1559] characterization of that.

Q. Will you just give your perception, Doctor, with reference to schools themselves.

THE COURT: Community perception is what you are talking about. Don't interject the School Board at this point.

A. Thank you. My perception – I beg your pardon – my opinion of the community perception would be that the action involved tended to maintain racial isolation in the Cleveland Junior High attendance area and at the same time to maintain the idea that Nolan was to be a white or predominantly white attendance area.

Q. Directing your attention, Doctor, to the Atkinson Elementary School as it appears on the map and the overlay in terms of the racial composition of the area, and the areas surrounding it, do you have an opinion as to the effect of the maintenance of that elementary boundary?

A. Well, as I indicated on this overlay – is that what you are asking?

Q. Yes, sir.

A. My opinion is that the maintenance of the elementary boundary as constituted on the Atkinson zone would be that it would be moving towards an all-black school and isolated as an all-black attendance area.

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[1590]

GORDON FOSTER

resumed the stand as a witness on behalf of Plaintiffs, and having been previously duly sworn, testified further as follows:

BY MR. LUCAS: DIRECT EXAMINATION (Continued.)

Q. Doctor Foster, did you make an examination of the feeder patterns in the Davison and White Elementary areas with respect to Cleveland Junior High School?

[1591] A. Yes, I did.

Q. Would you step to the map, Doctor, and explain your analysis?

MR. BUSHNELL: Would you mind telling me those schools again?

MR. LUCAS: Certainly. Davison Elementary, White Elementary and Cleveland Junior High.

A. Davison and White Elementary Schools are located in the generally northeast section of the city. Davison is here (indicating) and White to the east. They are part of the Cleveland Junior High feeder pattern.

In 1967-68, Davison and White Elementaries were transferred from the Pershing High School attendance area to the Osborn. As you can see by looking at the '66-67 map they were in the Pershing orbit. In '67-68 the feeder pattern was changed to include them in the Osborn area.

Q. (By Mr. Lucas) What was the racial composition of Davison at that time, Doctor?

A. '67-68, Davison was 95.5 per cent black and White to the immediate east was 38.3 per cent black. Pershing Senior High at the same time was 51.2 per cent black and Osborn Senior High was 12.5 per cent black.

Q. What was the effect of that transfer, Doctor?

A. In my opinion from the standpoint of integration the effect was good and also from the standpoint, the administrative [1592] standpoint of capacity, it seemed to have no problems, but essentially in terms of integration it increased the blacks in Osborn which was predominantly white and decreased the black population in Pershing which was approaching 50 per cent black.

Q. You mentioned capacity, Doctor, how did that affect or not affect the capacity problems?

A. The capacity for Pershing at the time was 2,570 with an over population of 484. For Osborn the capacity was 2,630 with an over population of 429. So this move tended to affect a closer agreement between the two over capacities.

Q. Doctor, directing your attention to the 1969-70 data, was there a change made in the feeder pattern?

A. There is some dispute from our data as to that in Exhibit 78-A, I believe it is, the Guide to School Boundaries. It says that in 1969-70, Davison was transferred back to Pershing Senior High from Osborn.

Q. Davison is what area?

A. The area to the left of the Cleveland Junior High zone represented on the underlay by the orange pattern which is 50 to 85 per cent non-white. However, the racial counts, I believe Exhibit 100-I, Indicate that the move was not made until 1970-71 and the figures for enrollment would indicate that this perhaps was the case.

[1593] Q. Doctor, the 1969-70 overlay which is Plaintiffs' Exhibit 109-K, does it show the transfer of Davison into Pershing?

A. Yes, it does, as represented by the green line here moving into Osborn, which is the White Elementary, and the open space here to the south of Pershing representing the transfer of Davison Elementary into Pershing.

Q. Doctor, for the record White Elementary is the name of the school, is that correct?

A. That's right.

Q. What is its pupil population?

MR. BUSHNELL: Black. We will stipulate to that.

A. In 1970 the pupil population of the White Elementary was 1,042, and the percent black was 42.5.

Q. (By Mr. Lucas, continuing) As I understand your testimony, Doctor, the maps, boundary guide books reflect the change in 1969-70, but from the enrollment data it appears that it possibly did not occur in '70-71, is that correct?

A. This is supported by the racial count and also the fact that in '69 Osborn had approximately 200 more students than in 1970, whereas Pershing in '70 had a little short of 200 more students than in '69, which would lend support to the fact that it was not moved until 1970.

Q. Doctor, directing your attention to the 1970 statistics, would [1594] you point out Davison and tell us its percentage?

A. In 1970 Davison had 1373 pupils with a 96.9 percent black population. White was 42.5 percent black.

Q. And Davison was sent into Pershing?

A. Yes.

Q. What was Pershing's racial composition?

A. In 1970, Pershing was 63.8 percent black, and Osborn was 14.0 percent black.

Q. Doctor, from the standpoint of capacity, can you give us how much over or undercrowded Pershing was, and then in turn Osborn?

A. In 1970 Pershing had a capacity of 2600, leaving an overpopulation of 644. Osborn was overpopulated by 441.

Q. And what were the figures in terms of overpopulation for 1969 as to those two schools?

A. In 1969 Osborn was overpopulated by 642, compared to capacity, and Pershing by 491. So, essentially from '69 to '70 the situation reversed itself.

Q. In terms of capacity?

A. Yes.

Q. Doctor, do you have an opinion as to the effect of the transfer of Davison from the Osborn zone into Pershing?

A. Yes. In my opinion it increased the amount of segregation in Pershing by adding more blacks. It made Osborn a more [1595] predominantly white school by taking the blacks from Davison into Pershing.

Q. Doctor, were there other alternatives available administratively for the purpose of desegregation?

MR. BUSHNELL: Could I have that question again?

Q. (By Mr. Lucas) Were there other alternatives available from the point of view of administration and desegregation?

A. Well, one possibility would have been instead of moving Davison back into Pershing to allow these two schools, Davison and White, to remain in Osborn and transfer some attendance area zones in the western part of Osborn to Pershing. For example, the Law Elementary School, which is in the northwest section of Osborn in 1970 had 397 students, 14.9 percent of whom were black. That could have been transferred into Pershing.

Q. Now, that's immediately on the eastern boundary of Pershing?

A. On the eastern boundary, yes.

Q. That would be a contiguous zone?

A. It would. Another possibility would have been to add a portion of Pierce Elementary, which is immediately south of that, to Pershing, depending on the need for capacity balance. This sort of moving would have favorably affected integration and also could have operated a little more efficiently in [1596] regard to overcapacity.

Q. Doctor, referring you now to the Parkman Elementary, would you make an analysis of the feeder patterns at that school;

A. The Parkman Elementary School–this is the 1969-70 overlay, Exhibit 109-K–the Parkman Elementary School is in the southwest corner of Mackenzie, or it was through 1968-69 in the southwest corner of Mackenzie area. In 1969-70 a shift was made to place Parkman Elementary School from Mackenzie area into the Cody area from the Ford Junior High feeder pattern–Ford is immediately north of Parkman–to the Brooks Junior High feeder pattern, which is to the northwest of Parkman, and on into Cody.

Q. Would you step to the big map, Doctor, please? Would you locate Parkman and the junior highs which you have just referred to on the large map, which is Plaintiffs' Exhibit 137-A, B and C, the overlays for elementary, junior and senior high on Plaintiffs' Exhibit 2, which is the 1970 census data?

A. On this map the Parkman Elementary zone is located here as part of Cody in the southeast corner.

Q. That would be the Cody High School feeder pattern?

A. That's correct, sir.

Q. Would you describe the Cody pattern?

A. Parkman is, under this arrangement, fed into Brooks Junior High School, which is just to the northwest of it, and from [1597] Brooks to Cody Junior High, a little further to the west, whereas previously Parkman was fed through Ford Junior High to the north and in the Mackenzie area, and from Ford to Mackenzie Senior High.

Q. Doctor, in 1969 what was the racial composition of the Parkman Elementary School? Give us the enrollment, also.

A. In 1969 Parkman had an enrollment of 632 with a 7.8 percent white–I beg your pardon. 7.8 percent black student population.

Q. And the overlay actually represents the 1970 data. What does Parkman reflect in 1970, Doctor?

A. In 1970 Parkman had a population of 647, 12.8 percent black.

Q. All right. What was the pupil population at Ford, the junior high to which it previously fed as part of the Mackenzie zone?

A. In 1969 Ford was 917 student population, and 34.7 percent black.

Q. And Mackenzie, Doctor, the senior high, would you locate it on the map?

A. Mackenzie Senior High is at the red dot.

Q. What was its pupil population in 1969?

A. In '69, 3,342 students, with a black percentage of 91.7.

A. All right, sir. So that that was changed into the Cody feeder pattern. Would you go through the Cody feeder pattern and give me, first of all, the enrollment and racial percentage [1598] at Brooks Junior High School?

A. In 1969 Brooks Junior High School into which the Parkman elementary area was fed was 662 students, 0.6 percent black. From there to Cody Junior High, and in 1969 Cody was 3,537 students, 2.5 percent black.

Q. Doctor, did you look at the capacity at Mackenzie and Cody High Schools in terms of their enrollment at that time?

A. In 1969 the capacity for Mackenzie was 2,820, leaving an overload of 522. The capacity for Cody was 3,248, leaving an overload of 279.

Q. Doctor, do you know what percentage capacity it was figured at at that time in the Detroit system?

A. I believe at that time 115 percent capacity.

Q. Doctor, do you have an opinion as to the effect of the transfer of the Parkman School from the--let's start first of all with the junior high school, Ford Junior High into the Brooks Junior High feeder pattern?

A. In terms of segregation, in my opinion the effect was bad, because it increased the number of whites in Brooks and decreased the number of whites in the Ford Junior High.

[1599] Q. All right, Doctor, do you have an opinion with respect to the transfer of the entire Parkman Elementary to Mackenzie where I believe you testified it was 91.7 per cent black into Cody which at that time was 2.5 per cent black?

A. In the senior high schools the effect given was bad in terms in integration because it increased--

MR. BUSHNELL: If the Court please, I ask the witness be instructed that he is not to editorialize or state conclusionary facts.

MR. LUCAS: I think that is exactly what an expert can do.

MR. BUSHNEL: I ask that the remark be stricken that the effect was 'bad'.

THE COURT: The objection is overruled.

A. In terms of Mackenzie the integration aspect was again decreased because it took whites away from the Mackenzie High School which was predominantly black. I think another factor involved in terms of the effect would be that if you have an area such as this, an elementary attendance area along which the boundary lines are rather completely racially identifiable, and you transfer this into a white situation it appears as though you're attempting to maintain a white status of this area.

MR. BUSHNELL: Objection, if the Court [1600] please. This is speculative. He is testifying to speculation.

THE COURT: The answer may stand.

Q. Doctor, would you describe the colors as they appear in the 1970 census map on either side of the line between the Parkman School and the Mackenzie area which has been removed as of this date? The Parkman School on the census map is white indicating a zero to 5 per cent non-white population. To the immediate east the McFarlane Elementary School is about half green

and half orange representing a 5 per cent to 85 per cent non-white population. To the north Ford School is green and to the northeast the Parker School is blue. The blue represents 25 to 50 per cent non-white, the green 5 to 25 per cent non-white population.

Q. Doctor Foster, what alternatives, in your opinion, were available, if any, at this time in terms of assignment patterns?

A. Since one factor may have been capacity, if this was a concern it would be my opinion that the Parkman if it were moved to Cody there would be no reason not to also move McFarlane so that the two elementary zones could have been both moved over to Cody. Another possibility would have been to involve the Ford Elementary attendance area and at least a portion of the Parker Elementary attendance area in a shift to Cody.

Q. That then would have left Parkman in Mackenzie?

A. That is correct. And in my opinion it would further desegregate [1601] both senior high school attendance areas, either move.

Q. You previously referred to certain recommendations made by Mr. Henrickson, is there a recommendation–

MR. BUSHNELL: If the Court please, I am going to object to these recommendations at this time until it is shown that the recommendations made by Mr. Henrickson, until it is shown to whom those recommendations were made and whether or not those recommendations ever came to the attention of the superintendent or the Detroit Board of Education.

MR. LUCAS: Exhibit 138 previously has been admitted.

MR. BUSHNELL: I realize it has been admitted. My objection is to the use of it.

THE COURT: I don't know what use is sought to be made of it yet. The witness' attention has been called to it, now we will find out what use he proposes to make of it.

Q. (By Mr. Lucas) Doctor Foster, are you aware of any recommendations made by Mr. Henrickson with respect to this particular attendance area?

A. Yes, I believe in this exhibit he made a recommendation concerning it.

Q. What was the recommendation?

MR. BUSHNELL: That's it. That recommendation [1602] is not binding on the Detroit Board of Education unless it is shown that it indeed came to the attention of the Board or to an executive of the Board, a superintendent.

THE COURT: At this point it isn't binding on the Board but it is relevant so far as the testimony of the witness is concerned.

MR. BUSHNELL: Very good, thank you.

MR. LUCAS: Your Honor, I would like the record to reflect Mr. Henrickson has been the Board's primary resource person throughout the trial.

THE COURT: We will get to that later.

MR. BUSHNELL: That doesn't make him an agent of the Board of Education under the law.

MR. LUCAS: Next he won't be an employee.

Q. (By Mr. Lucas) Would you answer the question?

A. Yes. On page 7 the report states the possibility to send McFarlane graduates–this is the McFarlane zone. (indicating.)

Q. Is that to the east or west of the Parkman?

A. Immediately to the east of Parkman Elementary zone, to send McFarlane graduates to Cody with coach lines on Plymouth which I believe is the base street here.

[1603] Well, in any event the coach lines on Plymouth, West Chicago and Joy–West Chicago is the road to the immediate north of the zones, Joy is the road in the direct center, and I assume that Plymouth is somewhere in the bottom but I can't seem to locate it.

Q. Is Joy Road the street on which the McFarlane School is actually physically located?

A. According to the map it is directly on it, yes, sir.

Q. Any other recommendations made by Mr. Henrickson with respect to that area?

A. The report continues, "There is no particular problem in setting up elongated senior high districts for Mackenzie and Cody along the coach lines," which would be east and west.

Q. Dr. Foster, directing your attention to Plaintiffs' Exhibit 109-P, did you make an examination of the area involving Northwestern and Chadsey?

A. Yes, I did.

Q. 109-P is overlaid on Plaintiffs' Exhibit 136-B, the 1960 census, and 109-A, which is the 1959 boundaries. Doctor, would you explain your analysis of the boundary changes in that area?

A. The 1961-62, the Ellis Elementary zone, the Ellis School is the black dot in the southwestern portion of this area and the Sill, which is an elementary school, is in the northeast [1604] area of Ellis and adjacent to it, they were transferred from Chadsey, which they were part of at that time or the year previous, to the Northwestern High School zone which is to the north and east of Chadsey.

At the same time the Newberry Elementary School which is to the south of Sill and to the Southeast of Ellis and is contiguous to the two which had been an optional zone, the option was ended and it was also transferred into the Northwestern attendance area along with Ellis and Sill.

Q. What was the racial composition of Northwestern at that time, 1960?

A. In 1960 on the racial composition of Northwestern it was 99 percent black.

Q. Do we have a figure for 1961?

A. I do not have a figure for '61, no, sir.

Q. Do you have a figure for 1962?

A. In 1962, Northwestern was 99.2 percent black.

Q. Chadsey in 1960, Doctor?

A. In 1960, Chadsey was 41.3 percent black.

Q. In 1962?

A. In '62 Chadsey was 44 percent black.

Q. The area you just described, Doctor, on the 1960 census map, can you describe the colors as they appear in that particular [1605] area?

A. In the Sill-Ellis-Newberry area?

Q. Please.

A. About a half of the area is made up of orange on the '60 census map indicating a 50 to 85 percent non-white population. A very small portion in the southeast section is red, indicating an 85 to 100 percent non-white. The western part of the three elementary zone area is largely blue, representing 25 to 50 percent non-white, some green representing 5 to 25 percent non-white, and on the extreme west, southwest is a strip of white representing 0 to 5 percent non-white.

Q. What was the racial composition of those schools in 1960?

A. In 1960, Ellis and Sills were figured together in the accounting books and their composition was 72.1 percent black. Newberry Elementary at the same time was 87.8 percent black.

Q. Both schools in 1962?

A. The Ellis-Sill in 1962 was 75.8 percent black, the Newberry 91 percent black.

Q. Doctor, do you have an opinion as to the administrative factors with respect to a move of Ellis-Sill and Newberry from the Chadsey zone to the Northwestern zone?

A. Capacitywise in 1960, Chadsey was underpopulated by 258 students. It had a capacity of 2950; Northwestern was overpopulated by 887 students, having a capacity of 1870.

[1606] In 1962 Northwestern was overpopulated by 1191 students and Chadsey was overpopulated by 26 students. Therefore, it is my opinion that moving three elementary zones into Northwestern would have an adverse effect on the capacity problem, administratively.

Q. Doctor, do you have an opinion–

MR. BUSHNELL: Excuse me. Before we move on to the next question, because Dr. Foster is not going to be immediately available for cross-examination, might I ask the source of the capacity figures for 1960 and for every year so they can be identified? Were they from the '60 books?

MR. LUCAS: Plaintiffs' Exhibit 80, which is the collection of capacity figures.

MR. BUSHNELL: Thank you. So we will know where to look.

MR. LUCAS: For counsel's and Court's clarification, when we are talking about prior to 1970-71 school years, the capacity figures all come from Plaintiffs' Exhibit 80 which is the school capacity charts, '69 and '70.

MR. BUSHNELL: Thank you.

MR. LUCAS: For 1970, Plaintiffs' Exhibit 92, "Selected School Data," furnished by Dr. Drachler.

MR. BUSHNELL: Thank you very much.

Q.Doctor, do you have an opinion as to the ratio effect of the [1607] reassignment of the Ellis-Sill and Newberry students from Chadsey to Northwestern?

A. My opinion is that it further segregated both Northwestern and Chadsey and, in fact, acted to contain the blacks in the Northwestern zone.

[1608] Q. What is the color appearing on the underlay for the Northwestern area generally, Doctor?

A. The color generally on the '60 census underlay is predominantly red with some orange.

Q. Representing what?

A. And there is an extreme eastern part where there is a bit of blue and green, but the majority represents 85 to 100 per cent non-white, or 50 to 85 per cent non-white.

Q. Doctor, directing your attention to the Sampson Elementary School, was there any change made in the boundaries in that area or in the feeder pattern?

A. The Sampson Elementary School is a little to the northwest of the Sill, Ellis, Newberry triangle, and in '64, '65 the Sampson zone was moved from Chadsey to Northwestern.

Q. What was Sampson's pupil enrollment and its per cent black at that time?

A. In 1964 Sampson was 1,275 enrollment, 99.5 per cent black.

Q. And at that time Northwestern was what per cent black?

A. 99.5, which is identical

Q. And Chadsey?

A. Chadsey at that time was 49.1 per cent black.

Q. Doctor, do you have an opinion as to the administrative purpose of such a move?

A. In 1964 Chadsey was–

[1609] MR. BUSHNELL: Excuse me. Was that question an opinion as to the administrative purpose?

MR. LUCAS: That was the question, counsel.

MR. BUSHNELL: I will object to that. He has an opinion as to the effect, but he can't testify as to what the administrative purpose was.

MR. LUCAS: I think he can testify as to whether or not there was an administrative purpose that he can see from his examination of the data.

MR. BUSHNELL: The best evidence, the only evidence of what the purpse was of the administrators would be the administrators themselves who made that decision.

MR. LUCAS: Your Honor, I recognize that we have a difference of opinion, but this isn't Perry Mason.

THE COURT: Well, I would think he could testify as to the effect of it, but what purpose they had in mind is something that he would only have a guess at.

MR. LUCAS: Your Honor, I didn't ask him what purpose they had in mind. I asked him whether he as an administrator, whether he had an opinion as to the administrative purpose for such a transfer.

THE COURT: He may answer that.

A. In 1964 Chadsey was over populated by 17 students, Northwestern by 580 students. In my opinion if you consider the variance [1610] in over population there was no administrative purpose. There would be no administrative purpose to transferring the zone to an area that was more over populated than the one from which it came.

Q. (By Mr. Lucas) Doctor, do you have an opinion as to the racial effect of such a transfer?

A. In my opinion as in the case with Ellis, Sill and Newberry, it increased the racial containment of the Northwestern zone and decreased what desegregation was in effect at Chadsey.

Q. Doctor, we spoke yesterday about the Vandenberg-Vernor assignment patterns. In reading the transcript I note we did not bring the Vandenberg-Vernor situation up to date. Would you step to the large map and show us the Vandenberg and Vernor Schools?

A. In 1970 Vandenberg is in the extreme – no. I beg your pardon. Vernor is in the extreme eastern end of the Ford attendance area, and Vandenberg is just west of Vernor.

Q. Where do they now feed as of 1970, according to the map?

A. According to the map they feed into the Ford High School area.

Q. Doctor Foster, do you have an opinion as to the effect of that change in the feeder pattern from, I believe it was Mumford in Ford in 1970?

MR. BUSHNELL: What year are we talking about?

[1611] MR. LUCAS: 1970, counsel.

A. My opinion would be that from the standpoint of integration this was a good move.

Q. (By Mr. Lucas) Thank you, Doctor. I show you a document which has previously been admitted as Plaintiff's Exhibit 3, the findings and recommendations of the Citizens Advisory Committee and Equal Educational Opportunities, and I ask you to read at page 79 the summary statement beginning with, "The overwhelming–" and reading to the end of that passage.

MR. BUSHNELL: May I see the section that is being offered to be read?

MR. SACHS: Your Honor, I make the objection I have made heretofore as to the reliance upon this document which I believe was introduced originally as part of the interlocutory proceedings

prior to the time that the Federation was a party to this case and which does not have any legitimate basis for introduction at all. It is entirely hearsay.

MR. YOUNG: We make the same objection.

MR. BUSHNELL: Thank you, sir.

THE COURT: Your objections are overruled. "The overwhelming and incontrovertible inference to be drawn from these data is that placement of teachers by Detroit Board of Education follows in general with some departures a definite racial pattern which is illustrated in the graphs showing [1612] percentages of Negro pupils and Negro teachers by districts. See appendix, II-X. Where the schools are mixed, Negro teachers are sent to these areas. Where the student membership is all white, Negro teachers are rarely sent. A second fact which is very clearly established is that Negro teachers, while on a stated basis of assignment close to home, are actually assigned instead on the basis of the racial composition of the school. For example, in the Jackson Junior High School, which is in a predominantly white neighborhood, the student membership is mixed by bussing from an overcrowded area, and five Negroes have been placed on the staff. Data also shows that Negro administrators are placed only where Negro children and Negro teachers are in the majority. There is but one exception to this, the placement of a special education assistant principal in a school where there are some Negro children in attendance."

Q. (By Mr. Lucas) Would you step to the big board? First of all, Doctor, let me direct your attention to page 98, I believe it is. I ask you to examine the graphs appearing on 98, 99 through page 106. Now, would you step to the big board?

MR. LUCAS: Is counsel familiar with this graph?

MR. BUSHNELL: Yes.

[1613] MR. LUCAS: Your Honor, I would like to pass this to the Court. I was planning to and will have copies as an extract for the Court.

Q. (By Mr. Lucas) Doctor Foster, will you now examine Plaintiff's Exhibit 154-A, which has been previously identified as representing the same data as the graphs, 1960-61? I ask you if

you could briefly explain this graph and after having done so, will you tell us whether or not you have an opinion with respect to the analysis and description you have just read from Plaintiff's Exhibit 3, and the graphic representations as it appears on 154-A?

MR. BUSHNELL: I have two objections to the two questions. First, to have this witness explain the graph is repetitious and accumulative, because Mr. Caldwell has already done that. The objection to the second question is that the exhibit speaks for itself, and I respectfully suggest the Court is quite capable of drawing any inferences that it deems appropriate from the exhibit.

THE COURT: You may answer.

A. Would you repeat the question again, sir?

Q. (By Mr. Lucas) Would you examine this exhibit and tell us if you have an opinion after examining this exhibit, the chart in Plaintiff's Exhibit 3, and at the same time whether or not you would agree or disagree with the conclusions based upon [1614] your examination of the same data?

A. The conclusions in the Citizens Advisory Committee report?

Q. That's correct, sir.

A. Yes. I think on the basis of looking at the chart and the report and their conclusions and that exhibit, 154-A, that I would agree with the conclusions. Essentially, if I may make a two or three sentence analysis, according to my opinion of this you have a large number of all black schools in which – I beg your pardon. You have a large number of all white schools at the left, extreme left end of the continuum on the chart in which there are no or very few black teachers. I think in one, two, three, four or five schools there are two or three black teachers possibly out of an estimate of perhaps all white schools. If you look at the chart as it moves to the right on the continuum and the percentage black, it reaches 100 per cent. The chart shows the black teachers to increase in the same proportion, indicating generally that black teachers are assigned to black schools in somewhat the same ratio as we find students, black student percentages in the black schools.

Q. Doctor Foster, directing your attention to Plaintiff's Exhibit 154-B –

MR. SACHS: Excuse me. May the record show that when the witness was speaking in the present tense [1615] he was referring to the exhibit which is labeled 1960-61?

THE COURT: Yes, it may note that.

Q. (By Mr. Lucas) Directing your attention to 1969-70, Plaintiff's Exhibit 154-B, Doctor, would you examine this particular exhibit, and after examining it do you have an opinion as to the relationship between the faculty and the pupil assignment, and would you compare it, Doctor, if you can, to the pattern as it appeared on the Exhibit 154-A, 1960-61?

MR. BUSHNELL: If the Court please, I object because as was pointed out earlier they can't be compared. They are not the same schools, not the same graphs.

THE COURT: Well, this is the overall system.

MR. BUSHNELL: No, it is not.

THE COURT: Well, except for the exceptions noted like Cass Tech and so forth.

MR. BUSHNELL: But, my point is that the schools are not in the same order on here.

MR. LUCAS: I will certainly concede that, your Honor.

THE COURT: I understand. Well, he was asked to explain the significance of that graph. Isn't that the question, in terms of students and faculty, student assignment, I mean, and faculty assignment, and students in [1616] attendance?

MR. LUCAS: That's right, and then make a comparison or give us his opinion regarding the relationship between that period, 1969-70 and what is depicted for 1960-61.

THE COURT: Yes.

A. If I may reverse the questions, I would prefer to answer the second one first in terms of comparison. Basically in my opinion there is very little difference between the configuration as shown on the 1969-70 chart and the 1960-61 chart. The only difference of any significance that I observed is the fact that in the all white schools and heavily populated white schools you do have in 1969-70 some black teachers assigned, whereas you did not have in most of the same type schools in 1960-61.

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[1619] . . .

A. If it please the Court, I don't believe we are comparing in this chart apples to oranges, but we are comparing apples to apples because we are comparing percentage black schools with percentage black schools. In other words, we are comparing 100 percent black schools here with 100 percent black schools here and all-white schools here with all-white schools here. (indicating). So, in effect we are comparing apples with apples.

THE COURT: You are anticipating Mr. Lucas' argument, Dr. Foster.

A. I did say there was a change in the fact that there are black teachers assigned to all-white schools in at least some quantity in the '69-70 chart. However, when I say I see no basic difference in the configuration otherwise we will have as the number and percentage of black students approaches all black, we still have a greater number of black teachers assigned to these schools and at the other end of the continuum [1620] as the schools approach all white, the number of black teachers diminishes very perceptibly, much as it did in '60-61. From the standpoint – well, I guess I wasn't asked that.

Q. Doctor, if there is something further you can explain on that exhibit, will you do so. Would you examine the increase in employment and the corresponding increase in enrollment of black students in the system between those two years. Can you explain what the graph shows or what the exhibit shows at this point?

A. From the standpoint of employment of black teachers it would appear that the gap in the 1960-61 between the percentage black teachers in a system and percentage of black students in a system which was somewhere from let's say 22 percent for teachers to 46 percent for students, has not narrowed appreciably in the '69-70 year because the gap here for teachers is around 39 percent in the system for students around 61 percent.

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[1621] . . .

Q. (By Mr. Lucas, continuing) Dr. Foster, did you make an [1622] examination of transportation practices and policies in the Detroit system?

A. Yes, I did.

Q. I will show you Plaintiffs' Exhibit 63 entitled, "Transportation to Relieve Overcrowding." It previously has been admitted in evidence and I will ask you if you examined that exhibit previously?

A. Yes, I have.

Q. Doctor, what is your understanding of the term "intact bussing"?

A. My understanding of the term "intact bussing," is that in the late '50's and early '60's children in the Detroit system were bussed –

MR. BUSHNELL: If the Court please, that answer is not responsive. The question was the definition of intact bussing.

MR. LUCAS: I asked him first of all if he made an analysis of the Detroit bussing, transportation.

MR. BUSHNELL: If it is responsive, then I move to strike the question on the ground it is leading.

MR. LUCAS: Strike the question.

Q. (By Mr. Lucas, continuing) Will you go into the Detroit system, Doctor, on transportation.

A. Answering it generally, counsellor, my answer would be that the intact bussing is the practice of transporting classrooms [1623] of children intact from one school to another and leaving them intact when they are educated at the receiving school.

Q. Doctor, when such transportation occurs from a school which is 90 percent or more black to a school which is predominantly a white school, what effect, if any, does this have in terms of racial segregation on those children?

A. This would lead to what we call classroom segregation or segregation within a particular school. It could be sometimes re-segregation, but essentially it is a segregated situation within a school which could be segregated or not segregated generally.

Q. Doctor, in your experience with school segregation and school desegregation plans, is this a technique which you have had to deal with in the past?

A. On occasion, yes, sir.

Q. Doctor, did you examine data or relevant information with respect to the transportation practices in the Detroit school system in connection with this type of bussing, intact bussing?

A. Yes, sir.

Q. What did your examination reveal, Doctor?

A. It is my understanding from the data that there was intact bussing generally in the late '50's, as I said, and early '60's.

Q. How did that intact transportation operate, Doctor?

[1624] A. It involved transporting classrooms in whole from one school to another receiving school and at the receiving school the classrooms were kept intact for instructional purposes.

Q. Was this policy changed at any time, Doctor, as far as you know?

A. It is my understanding it was changed in the middle '60's but I don't remember the exact date.

Q. What would the change be, Doctor? What type of bussing would result in terms of relieving overcrowding?

A. A change from intact bussing would imply that children were collected–

Q. Excuse me. Let me make myself a little clearer. What happens when you change from intact bussing?

A. I think I understand the question.

Q. All right.

A. You simply gather children up on a geographical basis and transport them and assign them at random to whatever grade they are in the receiving school rather than keeping them in an intact classroom.

Q. Doctor, what do you understand by the term "one-way bussing" in general?

A. One-way bussing is to be defined as the bussing of students of one race only; for example, if you bus black children out of an inner-city situation to white suburban schools, but you [1625] don't bus white children the other direction back into the inner city, for vice-versa, this would be called one-way bussing.

Q. Doctor, in your examination of the transportation to relieve overcrowding of the Detroit School System, were you able to form an opinion as to the transportation practice with respect to the so-called one-way bussing?

A. Yes. I went through these pages which run from 1960 to 1970 and I think it includes all of those years with the exception perhaps of '62 or '61-62 for which there were no records, and during this period I could find only one instance of students from a majority white school being bussed to a majority black school and this instance was the transfer that we have spoken of earlier in our testimony from Jefferson Junior High School which is a predominantly white school to Hutchins Junior High School.

Q. Hutchins was white?

A. Predominantly black. In this case the children who were transported were from the Jeffries Housing Project and were, if not all black, very close to it.

Q. Would that be an example of transportation of black children to a white school, Doctor?

A. This would be an example of transportation of black children to a black school.

[1626] Q. Even though the zone was a predominantly white zone?

A. That's correct.

Q. Doctor, what, in your opinion, is the effect of a policy of one-way transportation, that is to say, blacks to white schools instead of both directions?

A. In my opinion the effect of this is deleterious to the whole process of desegregation and in all districts in which I worked I think I could say unequivocally it has reached the point where it is no longer followed if for no other reason than the blacks refuse to go along with it. They simply won't go along with it any longer and they insist on two-way bussing.

Q. Why is that, Doctor?

A. Well, they perceive if it is a one-way bussing that they are being discriminated against.

MR. BUSHNELL: If the Court please, I am going to object to this witness testifying as to the perception of the black community. He has not been qualified as an expert on black perception.

MR. LUCAS: I think he has been qualified, your Honor, as an expert in desegregation plans and the effects of various vices of desegregation. I think he is eminently qualified to testify how they work and what their effects are and why they don't work.

[1627] THE COURT: Yes, he may answer the question.

MR. BUSHNELL: The further objection, if the Court please, that this concerns itself with remedy and not the right to relief.

THE COURT: The objection is overruled.

Q. (By Mr. Lucas, continuing) Go ahead, Doctor.

A. I just simply may respond to say that in any plans we have made, either from our desegregation Center or as private plan consultants, we have included, to the best of my knowledge, two-way bussing as a criterion for successful desegregation planning.

Q. Doctor, you testified before the objection with respect to the perception in the black community in terms of their accepting such a policy of one-way bussing.

A. My opinion is, and I have seen it happen in many communities as I indicated that the black perception is they are being discriminated against when they are bussed and white children are not. They are very unhappy about it.

Q. From your examination of the Detroit record what has been their practice with respect to transportation to relieve overcrowding over the last 10 years?

A. I am not sure I follow the question.

Q. Have you determined whether or not, Dr. Foster, there has [1628] been transportation of black—I'm sorry—white students to black schools or has the transportation been black students to white schools?

A. In most instances, the records I examined in Plaintiffs' Exhibit 63, and from some of the other data from testimony and so forth, it indicated that the majority practice was to bus black children to black schools generally or to white schools in the suburbs.

Q. You mean within the City of Detroit, though, don't you?

A. Yes, sir, in the outlying territory.

Q. I am trying to anticipate, Mr. Ritchie's question. Have you noted some examples of the bussing of black children from black schools to other black schools?

A. I have.

Q. Could you give us a couple illustrations?

MR. BUSHNELL: While Dr. Foster is looking through his notes, might I make the request that we made yesterday that on conclusion of his testimony we have access to the notes made?

MR. LUCAS: At the conclusion, yes. We have no objection to that.

A. In 1960-61, and we don't have any record for '61-62 so I am not certain as to that year, students were transported from Angell to Greenfield Park. This has already been part [1629] of our testimony, I believe, 186 students and students from Angell to Higginbotham, 118 students. In 1969–

Q. Excuse me, Doctor, let me ask you if the Angell-Higginbotham–were there white schools available with space, from your examination of the records?

A. Yes, there were.

Q. Between Angell and Higginbotham?

A. Yes, sir, I believe I testified to that before.

Q. All right.

A. In 1969 the Ruthruff Elementary School which was 99 percent black transported 143 children to Herman Elementary, 55 percent black.

Q. Would you step to the large map and exhibit that.

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[1633] . . .

Q. (By Mr. Lucas, continuing) Dr. Foster, would you step to the map.

I think we were talking about the Ruthruff-Herman Schools.

A. Yes. We were testifying at recess about transportation of blacks past white schools, In 1969 we stated that Ruthruff Elementary which is here in the southeastern portion of the Mackenzie High School zone on the large 1970-71 attendance area map, in 1969 transported 143 children to Herman Elementary School which is just below the blue area on the undermap here–Herman Elementary School (indicating). Herman in 1969 was 55.6 percent black, Ruthruff was 99.1 percent black and I think it is important to note that the access to Herman goes right past the Parkman Elementary School which at that time had 136 spaces available and according to their capacity figures–

Q. Parkman was what percentage?

A. Parkman I don't have the figure for '69 and '70. Parkman was 12.8 percent black.

Q. You previously indicated it was approximately 7.8 percent [1634] black in 1969.

MR. BUSHNELL: Excuse me, I didn't catch that statement by counsel. Could it be read back?

MR. LUCAS: I will be glad to repeat it to save time.

MR. BUSHNELL: I would like to have it read.

(The last statement of counsel was read by the reporter.)

MR. BUSHNELL: This transfer you were talking about is in what year?

A. 1969.

MR. BUSHNELL: Thank you.

A. Another example was the Parker Elementary School which is in the general center of the Mackenzie High School zone. Parker in 1970 was 79.4 black; 61 children were bussed from Parker again to the Herman Elementary School which at that time was 58.5 percent black and again past the Parkman Elementary which in 1970 was 12.8 percent black.

Q. Did Parkman have capacity at that time, Doctor?

A. Parkman in '70, according to my data, had 121 spaces.

Q. Is the Herman School located in proximity to a federal housing project?

A. My understanding is that there is a federal housing project [1635] on the north of the Herman School.

Q. Within the Herman zone?

A. That's correct, which goes both north and south of the school.

We mentioned earlier the Angell to Greenfield Park and Angell to Higginbotham in 1960-61.

MR. BUSHNELL: If the Court please, that has been testified to at least twice.

THE COURT: Yes, that is true, but he is talking about transportation at this time.

A. Well, to refresh everybody's memory, the Higginbotham School is to the north and Angell is in the center district and Greenfield Park School is in the southern end of the Pershing zone so the route went outward from the center in both instances.

There has been considerable testimony I believe on the bussing of children in 1970-71 from the A. L. Holmes School to the McGraw School.

MR. BUSHNELL: If the Court please, the testimony was that there was bussing the first semester of the'70-71 school year, not the second.

A. Again to refresh our memory, the A. L. Holmes–

MR.BUSHNELL: Well, I will object to this as repetitious and cumulative. The witness' own [1636] volunteered statement–he is refreshing everyone's recollection.

THE COURT: I think that has been covered in some detail Mr. Lucas.

MR. LUCAS: Yes, sir. I think in this case there is goine to be another example which will refer back to this particular one. I will not be at all cumulative. I think this will be very brief.

THE COURT: All right.

A. 1970-71, this current year, the Post Junior High School-

Q. Excuse me, would you give us the A. L. Holmes.

MR. BUSHNELL: I thought the Court ruled on that?

THE COURT: He says he is pursuing a non-cumulative matter here. If that be true he may go ahead.

A. A. L. Holmes School, children were bussed from this school over to the McGraw School which is in the south end of the Northwestern District in center city. In 1970-71 the Post Junior High School, which is located–

MR. BUSHNELL: If the Court please, Mr. Lucas just pointed out the location of Post which the witness obviously couldn't find on the map.

THE COURT: Well, he hasn't moved it.

[1637] A. I noted the west section of Cooley instead of the east. The Post Junior High School and Clinton Schools, which are in the east section of the Cooley High School attendance zone transported 54 students to the Jefferson School which is now in the Murray zone and it is located in the eastern section of the Murray High School attendance area. I think it is important to note that these students who were bussed came from a considerable distance north and there were several possibilities–

Q. Excuse me, were the Post children in a black school or white school?

A. The Post School this year, 1970-71 was 99.3 percent black. The Clinton School from which they also came was 97 percent black.

Q. What about Jefferson?

A. Jefferson was 87.6 percent black. There were two or three other possibilities much closer to the Post-Clinton area. One would have been in the western portion of the Mackenzie district here (indicating).

Q. What is the racial composition?

A. At this time it had 35.4 percent black with a capacity of 109 stations available. Another possibility would have been the

Vetal School in the Redford zone, the southern portion of the Redford High School zone, which at this time was [1638] 2 percent black with vacancies of 203 pupil stations and a third alternative could have been the Coffey School to the east of the Ford attendance area which at this time was 29 percent black with 69 pupil stations available.

Q. Did you say to the east was part of the Ford attendance area or outside of that, Doctor?

A. It's in the Ford attendance area.

MR. BUSHNELL: Tell us how many children were transported from the sending school.

MR. LUCAS: He already said, but he will repeat it.

MR. BUSHNELL: Refresh my recollection.

A. 54 students from the Post-Clinton School.

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[1640] . . .

Q. (By Mr. Lucas) Doctor, I understand that the policy of the district is that bussing to relieve overcrowding would be done in such a manner as to improve integration at the receiving school. From your examination of the current bussing examples which you have given, do you have an opinion as to [1641] whether or not that policy has or has not been followed?

A. Well, I think from the examples I have given so far it would give an indication that integration could have been effected in a much better way if the children, instead of going to the schools, would have been dropped off at other schools where the racial balance was quite different.

Q. Doctor Foster, directing your attention to the Carstens area, was there transportation there?

A. Yes, the Carstens area is in the eastern section of the Southeastern High School zone. In 1970 there were 225 children being bussed from Carstens to Carleton, which is in the northeast portion of the Denby High School attendance area. Carleton is 18 per cent black. Carstens is 48 per cent black. Other children are

being bussed from Carstens to McGregor at the very top of the Denby attendacne zone. The McGregor per cent black was 17.6 in 1970. 139 children were in this bussing arrangement. There were 192 children bussed from Carstens to Trix, which is in the northeast section of the Osborn High School attendance area. 23.6 per cent students in Trix were black in 1970.

Q. Were there other schools available besides those which had available space?

A. Well, one possibility that comes to mind is a school which was used as a receiving school the first part of the school, [1642] and that is McGraw, where there was quite a bit of space. It was quite a bit closer to the Carstens School --

Q. Excuse me, Doctor. With respect to the McGraw School, were any of the students assigned there from the A. L. Holmes? What schools were they originally scheduled to go to, do you know?

A. As I remember it, at least two if not all three of the receiving schools from Carstens, which would be Trix and McGregor and Carleton. I think that maybe Pulaski was also involved in that. There are other schools with considerable capacity closer than McGraw to the Carstens area. One would be the Duffield School, which is in the southern portion, southwestern portion of the King attendance area. It had 685 spaces available. It was 93.8 per cent black. Next to it the Bellevue was 98.4 per cent black with 572 spaces available.

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[1644] . . .

Q. (By Mr. Lucas) Doctor Foster, I show you Plaintiff's Exhibit 82, which is entitled "Open Schools, 1961-69," and I ask you if you previously examined that document?

A. Yes, I have.

Q. Doctor Foster, what do you understand by an open school policy?

A. An open school policy is synonymous with a freedom of choice policy or an open transfer policy. It is usually geared to

guilding capacity, so that a school system which has available spaces in a given number of schools will transfer children usually on a first-come, first-service basis to those schools if they so request, and usually it is done at the student's [1645] expense, transportation wise.

Q. Doctor, you have examined the pupil transfer forms contained in Plaintiff's Exhibit 82, and have you examined the practice and policy of the district with respect to open schools and transfers?

A. I think so, yes.

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[1647] . . .

A. My understanding of the data was that from approximately 1961 to 1966 the Detroit system had an open school policy in which I believe in the spring of the year schools were listed and published in which space would be available for the fall and that this policy was discontinued in 1966–I beg your pardon. It was not discontinued, but it was altered to include the corollary that the transfer of such children would have to improve the integrated status of the school.

Q. Would that be the sending or receiving school?

A. The receiving school is my understanding.

Q. Doctor, from your examination of the transfer form applications contained in Plaintiffs' Exhibit 82, can you describe what change, if any, took place from '61 up until the present time with respect to those transfer forms?

MR. BUSHNELL: The exhibit speaks for [1648] itself. There has been prior testimony as to this. This is cumulative.

THE COURT: Yes, but I just as soon he summarizes it for me. Go ahead.

A. I will need to refer to my notes, your Honor, because there have been a few changes and it is a little complicated.

In going through Plaintiffs' Exhibit 82, to the best of my ability, the first arrangement was a Form 32 in 1962 to '66 which

had no criterion for integration and the form did not ask for race. Then in the change I referred to just earlier starting in 1966, the Form 32 was changed to ask for the race of the student and the form states that transfer will contribute to the integration of the receiving school.

This was, I think, one of several criteria that was listed – that were listed. Then there was a switch in 1970 in transfer policy and a new form known as Form 36 in which there was no blank space for school preference and there was no mention of race. The form was not titled "Transfer Request," but "Pupil Adjustment Application,"and I believe that in January of 1971 there was a new form, Form 1061, which is in another exhibit.

Q. I will show you Plaintiffs' Exhibit 83, Doctor, and ask you if that is the new form to which you refer?

[1649] A. Yes. Form 1061 dated January '71. Again it is called a "High School Pupil Transfer Request." It lists the school to which the pupil desires transfer, the receiving school, it calls for the race of the student and the fact that the transfer will contribute to integration, which obviously is a return to the old Form 32 style.

Q. Doctor, directing you to the first page of Plaintiffs' Exhibit 83, can you tell me as of the date which appears thereon, January 27, 1971, the criteria for the transfer program is listed therein by three numbers. Read them, if you will.

A. No. 1 states – well, these list the procedures in handling the form. No. 1 states, "Entertain applications, but none will be honored until all applications are received. The deadline is February 15, 1971."

The No. 2 procedure states: "Application must contribute to the integration of the receiving school."

No. 3 procedure states, "Students in grades 9 or 10 will be given preference."

Q. Is there any indication on there that transfers are or are not open to students in grades 11 and 12?

A. Not on the cover sheet, and I do not see any indication on the inside to that effect.

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Q. Dr. Foster, have you examined any inforamtion which would [1654] too.

Q. (By Mr. Lucas, continuing) Dr. Foster, in your opinion what is the effect of an open enrollment policy such as the one in effect up until 1966 in terms of integration or segregation of schools?

A. My opinion would be that it would have very little effect on improving integration.

Q. What about the open enrollment policy with respect to enrollment of white children in predominantly black schools? Do you have an opinion with respect to that, Doctor?

A. Would you repeat that?

Q. With respect to a general open enrollment policy such as this, do you have an opinion as to the effects of such a policy in terms of white children enrolling under that program in predominantly black schools?

A. My opinion is that that would also have very little effect, because they generally don't do that.

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[1666] Q. (By Mr. Lucas) Doctor Foster, directing your attention to page 43 of Exhibit 155, would you read on page 43 and 44, beginning with paragraph B?

A. Over to where?

Q. To the end of the page, 44.

A. "District boundaries prior to 1956 were established by the staff officer in charge of the level involved in consultation with the district principal of the elementary level and with the principal of the school in cases involving secondary areas. In determining school boundaries the principal factor used was the capacity of the school and the area surrounding the school that the capacity could serve. Pointe C. School boundaries for the Winterhalter, Hutchins, Durfee and Mackenzie Schools were determined strictly within the lines of the policies and philosophy of the Board of Education mentioned previously. The changes were recommended by the School Housing Commission subject to the Superintendent's approval. Boundaries for the Higginbotham and MacDowell Schools were established at the time the schools were constructed

by selecting an area which the capacity of the school could [1667] house. Historically speaking, when the Higginbotham School was opened it was located in an area which had much room with a temporary war housing project being recently constructed. With the removal of the temporary war housing project and the resulting decline in the enrollment, the boundaries were still maintained. It is understood that the boundaries of the Higginbotham School have never been changed. and that resistance to an adjustment in the MacDowell-Higginbothem boundaries results from a social barrier established within an ethnic group. Point D. At the present time there are no optional areas at the elementary level. There are two optional areas in the west district, five optional areas in the southwest district, one each in the east and southeast districts, four optional areas in the northwest district, eight optional areas in the center district. All these areas mentioned are at the secondary level. The optional areas are determined by the School Housing Commission subject to the superintendent's approval and according to the philosophy and policies established by the Board of Education."

Q. Referring, Doctor Foster, to the first page of the report, what date appears thereon?

A. 1960.

Q. Doctor Foster, with reference to the matter you have just read and your testimony as to specific examples which has [1668] taken the last several days - I'm referring particularly to your description in the inception of your testimony with respect to various administrative techniques which may be utilized for the prupose of segregation or separation of students. Can you state from your examination of the specifics in the Detroit system and the matters which you have just read-- can you give us your opinion with respect to the utilization of those techniques you described in the Detroit system, that is, which of these techniques have been utilized, and which have not?

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[1676] Q. Dr. Foster, in light of this matter which you have read and in light of your testimony as to specific examples and various techniques from grade structure, boundary lines and optional areas, can you relate these in turn to your original statements with

respect to various administrative techniques which facilitate segregation in schools and give us your opinion as to which of these techniques have been utilized in the Detroit School System.

MR. BUSHNELL: Before the witness answers, I would ask that the question be read back by the reporter.

(The last question was read by the reporter.)

MR. BUSHNELL: It implies a conclusion of fact and it is objectionable on that ground. The question [1677] is very cleverly, or expertly, phrased, but it calls for this witness' conclusion - strike that - it assumes there has been segregation in the Detroit Public Schools. It is the ultimate fact to be determined by this Court and we object to the form of the question on that basis.

THE COURT: The objection is overruled.

A. In answer to your question, if my understanding is correct, one of the techniques I mentioned originally was the use of optional zones to maintain segregated practices. It is my opinion from the data and evidence presented that the Detroit system has used optional zones to maintain or increase segregation in the system. We cited, I believe, nine instances of this. The report which I just read listed a good many more. But, I would understand that these were probably elementary attendance zones –

MR. BUSHNELL: If the Court please, that is sheer speculation.

MR. LUCAS: Counsel, I think he is trying to help you at this point.

MR. BUSHNELL: The witness has already again stated a conclusion that segregation was being maintained. This assumption that there was segregation in the district, that has yet to be proved.

THE COURT: Well, I pointed out before [1678] that first of all this man is an expert, and I have accepted him as such on segregation in schools. Secondly, I know of no rule that prevents a tryer of the fact from hearing an expert, even if his expressions include the ultimate issue before the Court. I have called your attention to that before. I don't know how any expert can testify in this Court without using such terms as segregation and integration in expressing his opinion about them and I see no harm in it.

MR. BUSHNELL: My second objection --

THE COURT: Your second objection is covered by the matter which he read from page 44 which in itself indicates thtat it was talking about elementary attendance areas. Is my recollection correct in that regard?

A. Yes, Sir.

Q. (By Mr. Lucas, continuing) Dr. Foster, did you at my request attempt to ascertain approximately how many elementary schools were included in the nine or so examples which you had reference to?

A. I think in the area of 19 or 20, sir.

Q. Is that approximately the number listed in that book?

A. I believe so.

Q. Do I understand that it is your opinion that that is the type of optional areas described?

A. Yes, sir.

[1679] MR. BUSHNELL: May we find out, sir, again because we are not going to get to cross-examination, in what that opinion is based, so we can have access to the same source?

A. The opinion as to the 19 or 20 elementary schools, what was examined to arrive at that opinion? The testimony I presented–

THE COURT: Well, perhaps we can shorten this. I think what the witness is saying is that in the area covered by him there must be 19 or 20 elementary schools.

MR. BUSHNELL: Well, if that's all he is saying, fine.

MR. LUCAS: That is it exactly. We are trying not to overstate the case, your Honor.

MR. BUSHNELL: If he is just subtracting–

THE COURT: All he is doing is giving an estimate of what he thinks he covered by specific examples of optional areas.

[1680] Q. (By Mr. Lucas) All right, Doctor, go on, please.

A. The second technique I mentioned was zone boundary manipulation, and also feeder patter. I believe in the testimony there were approximately nine examples of this sort of practice,

and it is my opinion that these illustrated in each case that the Detroit system has used this as a device to maintain segregated schools or to increase or maintain racial isolation in certain areas. The report which I just read in relation to the Higginbotham-MacDowell area would support this, since this is one of the examples, I believe, we related in our testimony in saying that Higginbotham could be desegregated by adjusting zone lines with MacDowell School, and that this was an entirely acceptable possibility. I think a third area I mentioned was the use of transfer policies. We discussed in our testimony the changes in policies over the years by the Board and the school system, and it is again my opinion that transfer policies have been used to maintain an integrated school system—

Q. Doctor, did you misspeak?

A. A segregated school system, I'm sorry.

Q. Thank you, sir.

A. A fourth technique we mentioned was the use of transportation. In the testimony several examples were given of one-way bussing, of bussing children of one race past schools with capacity [1681] which were predominantly the other race. I believe all three of these examples support the position that this technique was used to maintain segregation, and finally the example, the technique was presented of grade structure and graded organization as being used as a technique to support segregation, and I believe in our testimony we gave an example or two of this in which junior highs or a junior high school was not constituted in a specific area where it could have been, and the elementary schools in the area were instead kept at K through 8, thereby lessening the possiblity of integrating this particular area.

Q. Doctor Foster, when you described transfers, do you include in there open enrollment policies, or do you treat that as a separate matter?

A. No, I included that originally, I believe, under the transfer technique.

Q. Doctor Foster, I show you a document in evidence, Plaintiff's Exhibit 70. I direct your attention to page 15 of the exhibit. The exhibit is School Planning Handbook, Bulletin 412, revised, January, 1970, Michigan Department of Education. Directing your

attention to Chapter 2, the School Site, and the last full paragraph in the left-hand column on page 15, Doctor, would you read that paragraph?

A. "Care in site location must be taken if a serious transportation [1682] problem exists or if housing patterns in an area would result in a school largely segregated on racial, ethnic or socio-economic lines."

Q. Doctor, would you step down to the map, please? Do you have a copy, Doctor, of Plaintiff's Exhibit 79?

A. Yes, I do.

Q. Doctor, would you examine Plaintiff's Exhibit 153, which shows new school construction, 1960 to 1970? Perhaps you had better step back here. Doctor, the black squares on here represent schools opening 80 to 100 per cent black in pupil enrollment. Would you direct your attention to the Drew Junior High School on the map and examine the exhibit and tell me when Drew was opened?

A. According to the exhibit, the Drew Junior High School was opened in 1970.

Q. And what was it opened as in terms of its enrollment, Doctor?

A. 1,587 students.

Q. And its percent black?

A. 95 per cent black.

Q. And the Eileen Primary School, Doctor, can you locate it on the map?

A. The Eileen Primary is in the Cooley High School zone, I believe.

Q. And when did it open, Doctor?

A. 1970.

[1683] Q. And what was its enrollment and its pupil population in terms of black?

A. 333 students. The per cent black was 99.1.

Q. Would you examine the map and locate the E. M. Turner Primary?

A. Yes.

[1684] Q. What year was that opened, Doctor?

A. The Turner Primary was opened in 1969.

Q. And its enrollment of pupil population?

A. 362 pupils, 97.5 percent black.

Q. Can you find the Stewart School on there, Doctor?

A. The Stewart School is in the same general area as Turner, a little to the south.

Q. What year was it opened?

A. 1970.

Q. Its population and percent black?

A. 766 enrollment, 98.8 percent black.

Q. Marxhausen Primary, Doctor, can you locate that on the map?

A. Marxhausen is in the Finney zone.

Q. Is that near or far away from the A. L. Holmes School, Doctor?

A. As I remember, rather close to the Holmes School.

Q. Can you locate the Holmes School with reference to that?

A. The Holmes School is the next one to the northwest.

Q. And what was its pupil population when it opened?

A. Marxhausen was opened in 1970 with a pupil population of 302, 92.4 percent black.

Q. Would you locate Mack Primary, Doctor?

A. Mack Primary is also in the Finney zone.

Q. And when did it open?

[1685] A. Mack opened in 1970 with an enrollment of 173, 98.8 percent black.

Q. Could you locate the Angell Primary area, Doctor?

A. The Angell area is in the Northwestern attendance zone.

Q. And what was its enrollment and percent black?

A. Angell was 1,282 students when it opened in 1970. The percent black was 99.9.

Q. Is there an asterisk by that particular school, Doctor?

A. On the exhibit?

Q. Yes.

A. Yes, there is.

Q. Would you refer to the cover and tell us what that asterisk indicates?

A. It says, "The racial count data included in existing school with the same name."

Q. Can you locate the Stark School, Doctor?

A. The Stark School is in the Southeastern zone.

Q. And what was its enrollment?

A. The enrollment was 822 when it opened in 1969.

Q. And the percent black?

A. 98.4 percent black.

Q. Can you locate the new King Senior High School, Doctor?

A. The new King Senior High School?

Q. Yes.

[1686] A. Here.

Q. When did it open?

A. It opened in 1968.

Q. What was its enrollment?

A. 1,897 pupils.

Q. And its percent black?

A. 98.8 percent black.

[1687] Q. Can you locate the Field Annex, Doctor?

A. Just to the northeast of King, the Field Annex.

Q. And what was its enrollment?

A. 461.

Q. Its per cent black?

A. 90.5 per cent black.

Q. Can you locate the Glazer School, Doctor Foster?

A. The Glazer School is in the Central zone.

Q. And when did it open?

A. In 1967.

Q. And what was its enrollment, Doctor?

A. 850 students.

Q. What was its per cent black?

A. 100 per cent black.

Q. You have located the Stevenson School?

A. No.

Q. Can you locate it?

A. The Stevenson School is in the Mackenzie area.

Q. When was it opened?

A. 1967.

Q. And its enrollment and per cent black?

A. 338 enrollment and 94.4 per cent black.

Q. Can you locate the Cortez School?

A. The Cortez School is also in the Mackenzie area.

[1688] Q. When did it open?

A. In 1966.

Q. What was its enrollment, Doctor?

A. 1,291 with a percentage black of 85.7.

Q. Can you locate the Beaubien Junior High?

A. It is in the Mumford zone.

Q. When did it open, Doctor?

A. In 1966 with a student population of 449 and a percentage black of 61.5.

Q. Do you recall that from other examples in terms of its approximate capacity, Doctor?

A. I beg your pardon?

Q. Do you recall the approximate capacity of Beaubien when it opened?

A. I can't exactly. It seemed to me it was around 1,100 or so.

[1689] Q. Do you know what its percent black is today, Doctor?

A. I believe it is 99 percent black today.

Q. Will you locate the Sander School, Dr. Foster.

A. Sander School is in the Northern District.

Q. When was it opened?

A. 1965.

Q. What was its enrollment in 1965?

A. 1,048 students, with a percentage black of 98.6.

Q. Will you locate the St. Clair Annex, Doctor.

A. It's in the Finney zone to the east.

Q. When did it open?

A. 1965, with a student population of 592.

Q. Its percent black?

A. 97.0.

Q. Doctor, will you locate the Murray Sentior High School on the map?

A. Murray Senior High School. (Indicating.)

Q. When did it open?

A. In 1965, with a population of 1,789 students.

Q. What percent black was it when it opened, Doctor?

A. 60 percent.

Q. What percent is it in 1970-71?

A. I believe it is 95.3 percent black.

Q. Kettering Senior High, when did it open?

[1690] A. Kettering opened in 1965, with a student population of 1105.

Q. What percent black was it then?

A. 73.1 percent.

Q. What is the present percent black in that school?

A. I believe 97.1 percent black.

Q. Will you locate the Earhart Junior High School for me, Doctor?

A. It's in the Western High School complex.

Q. When did it open?

A. 1965, with a population of 1,053.

Q. What was its percent black?

A. 13.6 percent black.

Q. According to the legend, what does the red square indicate, the legend on the map?

A. That it's 80 to 100 percent white upon opening.

Q. Will you locate the Reeves Primary, Doctor?

A. Reeves Primary is to the extreme northwest.

Q. Does it have a red square?

A. A red square, it's in the Ford attendance zone.

Q. When did it open?

A. 1964.

Q. Its population?

A. 115.

Q. Percent black?

A. .9 percent black.

[1691] Q. Can you locate the Krolik Primary, I believe opening in the same year?

A. Krolik Primary is in the Finney High School zone.

Q. What was its enrollment upon opening?

A. 1897.

Q. What percent black was it?

A. 98.8 percent black.

Q. Can you locate the Joy School, Doctor?

A. The Joy School is just north of that.

Q. How large is it?

A. 1359 students when it opened.

Q. When was that?

A. In 1964 with a percentage black population of 92.1.

Q. Doctor, can you locate the Tendler Primary Unit?

A. It's in the Southeastern zone.

Q. A yellow square?

A. That's correct.

Q. Doctor, when did it open?

A. In 1964 with 359 students and a percentage black of 63.5.

Q. Do you have the figure as to its percentage black today, Doctor?

A. 88 percent black today, Doctor, I believe.

Q. Can you locate the Fox Primary?

A. The Fox Primary is in the Ford zone.

[1692] Q. It has a red square indicating 80 to 100 percent white, is that correct?

A. That is correct.

Q. When did it open?

A. 1964.

Q. What was its enrollment?

A. 165 students.

Q. Did it have any black students?

A. No blacks.

Q. Can you locate the Bellevue School, Doctor?

A. It's in the King zone.

Q. When did it open?

A. 1964.

Q. What was its enrollment?

A. 1192 enrollment, 96.1 percent black.

Q. Can you locate the McGraw School once again on the map, Doctor?

A. McGraw School?

Q. Yes.

A. I had it a minute ago—here we go (indicating).

Q. When did it open?

A. It opened in 1963 with a student population of 1,025.

Q. What was its percent black?

A. 99.8 percent black.

[1693] Q. I am not sure of my pronunciation, but can you locate the Knudsen Junior High?

A. Here we go (indicating).

Q. When did it open?

A. It's in the Northeastern zone. It opened in 1963 with a population of 748.

Q. What was its black percentage?

A. 98.7 percent black.

Q. Directing your attention to the Keidan School, where was that?

A. That was in the Mackenzie zone.

Q. When did it open and what was its enrollment?

A. 1963, it opened with an enrollment of 1946 and a percentage black of 98.7

Q. Doctor, go to the Lessenger Junior High located as one of the red squares, I believe.

A. In the Cody zone to the east.

Q. How large was it when it opened?

A. 1,048 students.

Q. When did it open?

A. In 1963.

Q. Did it have any black students?

A. No black students.

Q. How about Murphy Junior High, Doctor?

[1694] A. Murphy is also to the west of the city in the Redford zone. It opened in 1963.

Q. Doctor, how close is it to the borderline of the city?

A. It appears to be in a park area right on the borderline.

Q. Would that–

A. (Interposing) East of the borderline.

Q. The western border of the City of Detroit?

A. Yes, sir.

Q. What was its enrollment?

A. 1,062.

Q. How many black students did it have?

A. .7 percent black.

Q. Can you locate Spain Junior High School, Doctor?

A. Spain is in the Northeastern district.

[1695] Q. When did it open, Doctor?

A. 1962.

Q. Its enrollment at opening?

A. 465 students.

Q. What per cent black was it?

A. An all black school.

Q. Can you locate Taft Junior HIgh, the same year?

A. Taft Junior High opened in 1962 in the western part of the city in the Ford zone.

Q. What was its enrollment?

A. 982.

Q. Did it have any black students?

A. No black students.

Q. Can you locate Jamieson, a 1962 school also?

A. Jamieson is in the Northwestern district, 1,134 students at opening, 99.8 per cent black.

Q. Can you locate Fleming in 1962?

A. Fleming is to the northeast of the city in the Osborn zone.

Q. What was its enrollment and percentage black?

A. 659 enrollment with no blacks.

Q. Can you locate the Butzel Junior High?

A. Butzel is in the King area. It opened in 1962.

Q. Its enrollment and per cent black?

A. 925 enrollment, 88.1 per cent black.

[1696] Q. Can you locate the Brooks Junior High School also opened in 1962.

A. Brooks is to the west in the Cody zone.

Q. Its enrollment and per cent black?

A. 500 enrollment and no blacks.

Q. Directing your attention to 1960, can you locate Woodward?

A. Woodward in the Northwestern zone. (Indicating.)

Q. Its enrollment and per cent black?

A. 1,003 enrollment, 97.0 per cent black.

Q. Can you locate Norvel School, Doctor?

A. Norvel in the Northeastern zone opened in 1960. 788 enrollment, 99.1 per cent black.

Q. One final example from the exhibit, the McKenny Annex, can you locate it?

A. The McKenny Annex is in the Ford district to the northwest and it opened in 1960 with a population of 1,543 and no blacks.

Q. Thank you, Doctor.

Doctor Foster, from your examination of the pattern of construction in this school system, 1960 to 1970, do you have an opinion as to the effect of that pattern of construction on segregation in the Detroit School System?

A. My opinion is that construction practices were followed in such a way as to increase segregation. I say this because of the

large number of schools that were opened that were [1697] either all black or all white or with a disproportionate number of one race or the other upon opening.

Q. Doctor, what is the average life expectancy for a school building, if I may use that term?

A. If I could state a range I would say forty to fifty years, generally. At least in the past it hasn't been so much a problem of the building as the utilization of the building and the space in it which deteriorates sometimes faster than the building.

Q. Are there any nationally recognized standards of school construction in terms of age expectancy, utilization expectancy of buildings?

A. I believe as a rule of thumb that is the national standard.

Q. Doctor, I take it many school districts are forced to use school buildings longer than that, is that correct?

A. Yes, sir.

Q. Doctor, in your opinion does the placement of a school have a long term effect on the attendance patterns in a school district?

MR. BUSHNELL: The replacement?

MR. LUCAS: The placement.

MR. BUSHNELL: I don't understand you.

MR. LUCAS: Location.

A. Would you repeat the question?

[1698] Q. (By Mr. Lucas) Does the location of a school in a particular place have a long term effect on a school system?

A. In terms of the nature of the pupils assigned to the school, do you mean?

Q. Yes, sir.

A. Yes, it does.

Q. Are there alternatives in schoolhouse construction which can or should be considered by a school district in terms of affecting the racial composition of student bodies?

A. In terms of site selection there are, yes.

Q. What are some of the alternatives which can or should be utilized, in your opinion, Doctor?

A. It is customary in this day and age to consider the problem of integration or segregation very carefully in selecting sites for school buildings and, well, this was pointed out, I believe, in the bit I read from the Michigan State Department.

Q. What effect in terms of perception of the community does it have when a school is opened with an overwhelming enrollment of one race or the other?

A. Generally the community perceives, in my opinion, that the school has been thought of as being, going to be an all white school or all black school and in either case generally that it is racially isolated.

[1699] Q. Doctor Foster, did you examine the current attendance patterns and boundary lines in the City of Detroit to determine what some of the techniques could be used to desegregate the existing pattern of school assignment?

A. Yes, I did.

MR. BUSHNELL: I would object. That assumes a fact not in evidence.

THE COURT: You may answer.

Q. (By Mr. Lucas) Would you like to step to the map, Doctor, and give us some of those examples?

A. I considered rather briefly the possibility of some desegregation techniques and --

MR. YOUNG: I would object at this time. This testimony clearly goes to remedies as opposed to the right to relief. It is not relevant at this time.

THE COURT: No, I think not. You may answer.

A. In looking at any school system the sort of what we might call soft spots in terms of desegregation would be in border areas where you have white and black population bridging up against each other. So, merely as an attempt to be illustrative of where there are segregated practices now because of boundary lines, and where these could be changed a bit to improve the situation, I

simply made a quick swing around the [1700] Detroit system, and I have seven or eight examples I think I can recite rather quickly.

First of all, in the northwest section the elementary zone of Bow and Vandenberg abut each other. They are both K-6 schools. They are both in the Ford High School attendance zone. Bow is 806 white, 177 black. Vandenberg is 27 white, 391 black. Bow is 17.8 per cent black, and Vandenberg is 93.5 per cent black. In my opinion these schools could either be paired or the zone lines could be redrawn in such a way as to effect a racial balance which would come out at about 40 per cent, or approach 40 per cent, however you did it, black for the two schools, instead of the disparity which now exists from 17.8 per cent to 95.3 per cent. Going south, the Crary Elementary School, a K through 8A, is in the Cooley zone, and the J. R. King School, also in the Cooley zone, is a K through 8B. These two schools are both in the Cooley zone. Crary is 20.6 per cent black, and King is 91.8 per cent black. These two schools, in conjunction with the Cerveny-Stratford area, could be redrawn in their zone lines, or some grouping combination or non-contiguous zone pairing between Crary and King-

Q. Doctor, just very briefly what do you mean by non-contiguous zone pairing?

A. Affecting desegregation between two schools which are not [1701] contiguous in such a way as the students would cross over another area to get to their destination.

Q. Is this a technique used frequently in desegregation plans?

A. Very frequently these days, yes. Going further south, the Burns Elementary School, which is 59.8 per cent black, the Dossin Elementary School, which is 5 per cent black, and the Edison School, which is 2.7 per cent black could be grouped or zone lines redrawn. Burns is a K-6 school as it now stands. Dossin is a K-7A. Edison is a K-8B. The grades past the 6th grade could be incorporated with Cadillac, which is in with Burns area. Cadillac would be made into a junior high situation. These three schools could be grouped in such a way as to effect an approximation of 37 per cent black in each school to approach racial balance.

[1702] MR. BUSHNELL: 37 percent in each school?

A. Yes. In the Southwestern district going again south, the Higgins is a K-6 school which is .6 percent black. The Jeffries

School adjacent to it is a K through 6 school which is 98.2 percent black. These two schools could have their zone lines redrawn, or be paired in such a way as to effect the racial balance of approximately 43 percent black. Do you understand that if the zones were redrawn, you wouldn't come out with an even percentage distribution, probably? If they were paired, you would. Also in the Southwestern zone the Morley Elementary School and the Cary Elementary School which are adjacent, both K-6 schools, the Cary School 60 percent black, the Morley School 16.7 percent black, if these zone lines were redrawn, or if the two schools were paired, they could approach a balance of approximately 39 percent black. Going into the Western-Murray area, you have Earhart Junior High, which is in the Western zone. It is 8.6 percent black. In the Murray area you have Pelham Junior High, which is 81.3 percent black. These two junior high zones could be redrawn in such a way as to approximate a racial balance of 37 percent black.

Again in the Western zone you have McKinstry Elementary School, which is 4 percent black, and the Craft Elementary School in the bottom of the Northwestern [1703] district adjacent to it which is 86.8 percent black. The zone lines for these two elementary schools could either be redrawn, or the schools paired. They are both K-6 grade organization.

Q. Doctor, with respect to that example and perhaps some of the others, do you have an opinion as to the effect of maintaining the existing boundaries when schools on either side are of racial compositions as you have used in that particular example?

A. I'm not sure I follow your question.

Q. You have given an example of schools predominantly white, and directly contiguous to it a school predominantly black.

A. Yes.

Q. Do you have an opinion as to the effect of the maintenance of the existing boundaries between those schools?

A. I'm still not clear as to your question. My recommendation would be to redraw the zone lines in such a way – I don't have enough data to know whether this would be feasible in terms of locations of the buildings, the shape of the buildings, the different classroom arrangements and all this, the locations of the pupils. Frequently this sort of thing is feasible. If it isn't, then the

next obvious answer is a pairing. If you have a pairing, the zone lines between the two schools would be obliterated, and they would become [1704] a common zone, but the grade structure would be paired.

Q. My question then, Dr. Foster, is do you have an opinion as to the effect of the failure of the Board of Education to take these actions with respect to either of those options?

A. Well, I think I stated as I started around –

MR. BUSHNELL: If the Court please, I will object to the form of that question. There is no evidence that the Board has failed to take these actions or, indeed, has failed to consider the many other factors that this witness himself has acknowledged exists.

MR. LUCAS: Your Honor, I think the map speaks for itself; that they have failed to take that action.

THE COURT: You may answer.

Q. (By Mr. Lucas) Do you have an opinion as to the effect of the failure of the Board of Education to exercise either the pairing option or the option which you have suggested in terms of segregation of the system?

A. I think the effect is that they have missed a good opportunity for integrating the system a great deal further than they have.

Q. All right, sir.

A. As I started around, I believe I mentioned that all of these in addition to being possibilities for present [1705] desegregation in fact exist now as examples of things that could have been done, for example, at the beginning of the school year. I have two other examples. As we swing around into Finney we have two K-7-A schools, the Hamilton School, which is a K - 7-A, 70.8 percent black, and the Stellwagen School, which is also a K through 7-A school and was originally in the Jackson attendance area, is a school with no blacks. It would be possible to pair these two schools, or perhaps to rezone them in such a way as to effect a racial balance approaching 40 percent black. I beg your pardon, sir. I misread my notes, I believe. Hamilton at Stellwagen are now both K-8 schools, I believe, and my suggestion in making these K-7

was to move the eighth grade to Jackson, which is just below them. The final example would involve two K-6 schools, Macomb Elementary School, which is in the southern end of Denby, and the Hutchinson Elementary School, which is in the western end of Finney, and a third school, the Goodale School, which is not a K through 9 school. If the junior high portion of the Goodale School were transferred to Arthur and Marquette, which are junior high schools in the general vicinity, Arthur being here, and Marguette – I can't find it.

MR. BUSHNELL: I think it is to the right down there.

[1706] A. Here is Marquette. I'm sorry. This would relieve three K-6 schools which could be grouped at the present time. Hutchinson is now 97.3 percent black. Macomb is 2.8 percent black. Immediately adjacent to it and north, Goodale is .7 percent black. If these three schools were grouped, a balance of approximately 45 percent black would be effectuated. Again I think I should point out, counsellor, that these are merely illustrative situations which exist now which could be acted upon in the future or could have been acted upon this past year.

Q. Would you resume your seat, please, Doctor?

THE COURT: How much longer do you believe we will have the witness?

MR. LUCAS: About five minutes, your Honor.

THE COURT: Your direct examination?

MR. LUCAS: Yes, sir.

THE COURT: Well, I suggest full speed ahead.

MR. LUCAS: I'm sure the witness agrees, your Honor.

[1707] Q. Dr. Foster, you stated you were giving these examples as illustrations of techniques. Would these necessarily, any of these necessarily be part of a comprehensive plan of desegregation for the entire system?

A. They might well be, but a great deal more data would have to be available for the system and I think I mentioned previously in testimony for all practical purposes desegregation cannot be planned intelligently unless you consider the system as a whole.

Q. What type of data would be of assistance in preparing a plan of desegregation, Doctor?

MR. BUSHNELL: Excuse me –

Q. (Continuing) – in addition to some of the other data available.

MR. BUSHNELL: Do I understand the question is what type of data would be of assistance for a pairing plan of desegregation? Was that it?

MR. LUCAS: Preparing a plan of desegregation.

MR. BUSHNELL: I am sorry, I'm not understanding.

A. Well, in order to operate intelligently in this field you need all of the data input you can muster, particularly you need what we call a pupil spot map, a device to indicate [1708] where the pupils are located and by race and you need all sorts of demographic data such as where the throughways are, how the streets run. One needs to become familiar with where these schools are, their capacities, the nature of the buildings, this sort of thing.

All of these matters have to do with making reasonable decisions in developing a plan.

MR. LUCAS: I have no other questions of Dr. Foster, at this time, your Honor.

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